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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Your No. }

දිනය } 12.10.2026
திகதி }
Date. }

Case No:

1. HRCSL-KLM-134-26
2. HRCSL-KLM-135-26
3. HRCSL-KLM-136-26
4. HRCSL-KLM-137-26
5. HRCSL-KLM-138-26
6. HRCSL-KLM-139-26

1. Ms. C V Shihaniya Farwin
Healthcare Assistant, Kalmunai Base Hospital,
Kalmunai North
2. Ms. I Fousuna,
Healthcare Assistant, Kalmunai Base Hospital,
Kalmunai North
3. Ms. M A R Farhana,
Healthcare Assistant, Kalmunai Base Hospital,
Kalmunai North
4. Ms. M Roshan Safeeha,
Healthcare Assistant, Kalmunai Base Hospital,
Kalmunai North
5. Ms. M A Fathima Rifa,
Healthcare Assistant, Kalmunai Base Hospital,
Kalmunai North
6. Ms. A Fathima Sasna,
Healthcare Assistant, Kalmunai Base Hospital,
Kalmunai North

Complainants

Vs

1. Dr. K Sukunan,
Director, Kalmunai Base Hospital, Kalmunai North
2. Dr. P Shrisankar,
Deputy Director, Kalmunai Base Hospital, Kalmunai
North
3. Dr. Rjenthiran,
Medical Officer, Kalmunai Base Hospital, Kalmunai
North
4. Mr. T Devaarul,
Administrative Officer, Kalmunai Base Hospital,
Kalmunai North
5. Mr. Thankavel,
Superintend, Kalmunai Base Hospital, Kalmunai
North

Respondents

ප්‍රධාන කාර්යාලය } අංක. 14, ආර්. ඒ. ඩෙ මෙල් මාවත, කොළඹ - 04.
பிரதான அலுவலகம் } இல. 14, ஆர்.ஏ.த.மெல் மாவத்தை, கொழும்பு - 04.
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1. Facts of the Case

This case concerns the Respondents' decision to compel the Complainants newly appointed Healthcare Assistants who are Muslim women to remove their headscarf (cloth covering their heads), long sleeves, and jeans worn in addition to the prescribed uniform, and to instead report for duty dressed without scarves, long-sleeved garments, and jeans.

The Complainants stated that they were appointed by the Ministry of Health as Health Assistants Grade III on 30 July 2026, along with 36 other newly appointed employees to the same post. On 6 August 2026, they reported to the Kalmunai North Base Hospital at 6:30am. with their letters of appointment. Among the 36 newly appointed employees were nine Muslim women. After all of them had signed the attendance register, an orientation session commenced at around 10:30am. At this session, the Administrative Officer reportedly instructed, in strict terms, that the Muslim women remove their headscarves (cloth covering their heads), long-sleeved garments, and jeans worn in addition to the prescribed uniform.

On 9 August 2026, when the Complainants reported for duty in the same attire, an officer named Ms. Arundan Gunavathi is said to have warned them that if they reported for duty in the same attire again, they would not be permitted to sign the attendance register, as instructed by the Hospital Director, Dr. Sukunan, the 1st Respondent.

The 4th Respondent thereafter summoned the Complainants to his office and stated that if the Complainants were permitted to work in this attire, the 1st Respondent had said that the officers would have to 'answer to their community'. The Complainants stated that they were frightened by this statement. The 4th Respondent then asked the Complainants whether they were married, to which the Complainants replied in the affirmative. The 4th Respondent is then said to have remarked, 'Then what is the problem in taking off your clothes?' and added that they should all report for work bearing this in mind.

The next day, 10 August 2026, when they went to duty at 6:30am, a supervising officer (Overseer) reportedly stopped the concerned officers from signing in and made them stand outside. At that time, three of the officers decided to remove their scarves, long sleeves, and jeans, after which they were allowed to sign in and were later permitted to go to duty. Looking at the remaining six (i.e., the Complainants), the officer reportedly said that 'they would be permitted only if they removed their scarves, the long trousers, and the long sleeves; otherwise, a 'red mark' would be recorded against them. In response, all six of the Complainants did not agree, but were later allowed to sign in.

On the same day at around 9:30am, the Complainants were called to the room of the 2nd Respondent, who reportedly put forward four conditions: First, as mentioned earlier, that they would be permitted to carry out their duties only if they attended work having removed their scarves, long trousers, and long sleeves. Second, alternatively, that they would be transferred to Batticaloa Hospital. Third, if there was anyone else willing to swap posts (Mutual transfer), that they submit the relevant details and letters of consent by 12:00 noon the same day, in which case that would be permitted. Fourth, if they failed to do any one of these three things, they should hand in their resignation letter and stay home. It was further stated that if they continued to come in this attire, they would have no safety within the hospital, and that any patient could 'stab them with a knife'.

2. Action taken by the Kalmunai Regional Office

After the complaints were lodged at the Commission, the HRCSL Kalmunai Regional Office tried to contact the 1st Respondent on his mobile to verify the issues. However, there was no response from him.

On 18 August 2026, at 2.45pm, the Kalmunai Regional Office held an inquiry. However, the 1st Respondent was absent at the inquiry. Instead, an officer from Batticaloa Teaching Hospital named Dr. S. Mathanalagan, Senior Consultant Anesthetic attended the inquiry.

An attorney-at-law represented the Complainants. He stated that the Complainants were not permitted to attend the inquiry, as they were instructed to be present at the Hospital until 4.30pm to receive their transfer letters. He stated that the complainants were verbally harassed by the 2nd to 5th Respondents and threatened by the Hospital trade union.

The Respondents argued that the Hospital administration followed the circulars issued by the Ministry of Public Administration. They also claimed that other staff in the Hospital had complained to the administration about the Complainants wearing scarves, long sleeves and jeans in addition to the prescribed uniform. Subsequently, the Hospital administration reported these incidents to the Ministry of Health. Therefore, the Hospital administration has issued individual warning letters to the Complainants on not following circulars and the prescribed uniform. Furthermore, they stated that they merely insisted on the circulars being followed, and any changes to the circulars should come from the Ministry of Public Administration. They maintained that they were not responsible for any outcomes of the circulars. Finally, the Respondents stated that the Complainants would receive their transfer letters shortly.

The HRCSL Kalmunai Regional Office visited another government base hospital nearby in Ampara to monitor the practice of prescribed uniforms. It was found that Muslim women officers were permitted to wear the same attire (headscarves, long sleeves, and jeans worn in addition to the prescribed uniform) without any restriction. The HRCSL staff also inquired about that Hospital's interpretation of prescribed uniforms under Public Administration Circulars Nos. 13/2019 and 26/2022. The administration stated that they have permitted Muslim women officers to wear headscarves, long sleeves, and jeans in addition to the prescribed uniform to ensure women's rights to work while following and practicing their religious beliefs.

3. Analysis

At the outset, it is noted that the Kalmunai North Base Hospital administration issued a letter to the Complainants titled 'disciplinary action on not following prescribed uniform' after they lodged complaints with the Commission. The Kalmunai North Base Hospital administration also permitted other staff members to protest against the Complainants within the Hospital premises during working hours.

The Commission notes that the Complainants were prevented from attending the Commission's inquiry on 8 August 2026 until 4.30pm by the Hospital administration. They were forced to remain at the Hospital even though their duties ended at 2.45pm, on the premise that they had to wait to receive their transfer letters. The Complainants were then temporarily transferred to another base hospital while the case was pending before the Commission.

It is also noted that three out of nine newly appointed Muslim women healthcare assistants, who in fact removed their scarves, long sleeves, and jeans, were also transferred without any justification.

The Commission observes that Public Administration Circular No. 13/2019 dated 26 June 2019 recognizes the right of public officers to wear additional attire reflecting their religious identity, provided that their face remained clearly visible. The Clause 3(IV) of the Circular provides:

If there are officers who have arranged their clothing according to certain religious customs, such officers should be attired in the manner indicated in I above and use an additional clothing item to keep their religious identity but so as to expose their full face (except ears) ensuring their clear identification.

This circular was subsequently cancelled by Public Administration Circular No. 26/2022 dated 30 November 2022. It specifically states that attire according to Public Administration Circular 8/89 dated 1 February 1989 will remain valid. The Commission notes that this 1989 Circular merely states the following:

The Government has decided that all Public Officers and Corporation Officers in the Staff Grade should be attired either in the National Dress, or Tunic Shirt and Trouser, or Shirt and Trouser with tie, when they attend Office and/or attend to their official duties and functions.

Although, following the cancellation of the 2019 Circular, no circular has been issued by the Ministry of Public Administration expressly recognizing the right of Muslim women officers to perform their duties while wearing hijab and other modest attire consistent with their religious beliefs, no circular prohibits such attire either. The Commission is of the view that neither the 1989 Circular nor the 2022 Circular explicitly prohibits any form of religious attire. Consequently, individual hospital administrations have adopted differing practices and interpretations, resulting in arbitrary restrictions and repeated violations of constitutionally protected fundamental rights.

The Complainants alleged that their fundamental rights to the freedom to manifest their religious belief in public places and the freedom to engage in a lawful occupation were violated by the Respondents, and that they were subject to discrimination on the grounds of race, religion, and sex.

a. The freedom of religion or belief

The Commission recalls its findings and recommendations in its recent decision in ***Select Candidates of the GCE Advanced Level Examination of 2024 Zahira College, Trincomalee v. (Former) Commissioner General of Examination & Commissioner General of Examination, Case No. HRC/SUO-MOTU/02/2024.***

The freedom of religion or belief has two aspects. It first entails the freedom of a person to have or adopt (and therefore change) a religion or belief. This aspect of the freedom of religion or belief is guaranteed by article 10 of the Sri Lankan Constitution, which provides: ‘Every person is entitled to freedom of thought, conscience and religion. This aspect may be understood as part of the ‘*forum internum*’, i.e., a person's inner realm of thinking and believing.

The Supreme Court in ***Centre for Policy Alternatives & Others v. The Attorney General & Others SC (F.R.) 91, 106 and 107/2021*** (at p. 11) held:

The freedom of thought, as enshrined in our fundamental rights, stands out as a cornerstone of democracy. The freedom of thought ensures that a person's mind remains beyond scrutiny. To infringe upon the freedom of thought is to undermine the very essence of a democratic society, for it is within the realm of individual thought that the roots of self-expression, personal liberty, human dignity and the flourishing of all other fundamental rights are nurtured.

It is noted that the freedom of thought, conscience and religion is an absolute right and cannot be subject to any limitation. The Supreme Court has clarified this position in the above-mentioned case by observing (at p. 11):

According to Article 10, the State cannot prevent a person from thinking or believing in some religious ideology on the basis that such thinking or belief is irrational or extreme...Article 10 sets an absolute bar against such infringements.

It is also noted that, according to article 83 of the Constitution, article 10 cannot be repealed or amended except by a two-thirds majority in parliament and the approval of the people at a referendum. Such is the absolute status of the freedom of thought, conscience, and religion under the Sri Lankan Constitution.

The second aspect of the freedom of religion or belief is the freedom to manifest religion or belief, which is guaranteed under article 14(1)(e) of the Constitution. Article 14(1)(e) provides:

[Every citizen is entitled to] the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.

The United Nations (UN) Human Rights Committee in General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion)¹ offers an explanation of the terms ‘worship’, ‘observance’, ‘practice’, and ‘teaching’. The Committee has interpreted the scope of article 18(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is party, and which recognizes the freedom to manifest religion or belief. First, worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. Second, observance: include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. Third, practice includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers. Finally, teaching includes the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications. Notably, there is some overlap between these concepts, and in particular, between practice, observance, and teaching.

The Commission recalls the Supreme Court's observations in *Premalal Perera v. Weerasuriya* [1985] 2 Sri.L.R. 177 (at p. 192):

A religious belief need not be logical, acceptable, consistent or comprehensible in order to be protected that unless where the claim is so bizarre, so clearly non-religious in motivation, it is not within the judicial function and judicial competence to inquire whether the person seeking protection has correctly perceived the commands of his particular faith (emphasis added).

Therefore, according to the Supreme Court, the precise scope of a belief in terms of what constitutes a protected form of worship, observance, practice, or teaching should not be defined by the Commission or any other adjudicative body, as such scope is defined according to how the person

¹ Human Rights Committee, General Comment No 22 - Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/1 Rev.1 I Add.4, para. 4.

concerned perceives the 'commands of their particular faith'. Only claims that are 'so bizarre' and 'so clearly non-religious in motivation' could be excluded from the scope of the freedom of religion or belief.

The Commission observes that, regardless of what acts and conduct might be treated as falling within the scope of the freedom to manifest religion or belief, such freedom can be subject to limitations under the Sri Lankan Constitution. Any limitation on the freedom to manifest religion or belief must meet the criteria set out in article 15(7) of the Constitution. Article 15(7) provides:

The exercise and operation of all the fundamental rights declared and recognized by [Article 14] shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.

The term 'law' in article 15(7) should be interpreted in terms of article 170 of the Constitution, which provides:

"law" means any Act of Parliament and any law enacted by any legislature at any time prior to the commencement of the Constitution and includes an Order in Council.

This term should be distinguished from the term 'written law', which according to article 170 means:

any law and subordinate legislation and includes statutes made by a Provincial Council, Orders], Proclamations, Rules, By-laws and Regulations made or issued by anybody or person having power or authority under any law to make or issue the same.

An instrument used to directly limit a fundamental right should fall within the ambit of 'law' and not 'written law'. This principle was clearly recognized by the Supreme Court in *Thavaneethan v. Dayananda Dissanayake* [2003] 1 Sri.L.R. 74 (pp. 97-98). The Court clarified that the term 'law' found in article 15(7) of the Constitution is restrictively defined in article 170 to mean Acts of Parliament and Orders-in-Council and is only extended to include emergency regulations issued under the Public Security Ordinance, No. 25 of 1947. Meanwhile, the UN Human Rights Committee has explained that 'law' must be 'formulated with sufficient precision to enable an individual to regulate their conduct accordingly and it must be made accessible to the public'.²

The Supreme Court of Sri Lanka has clarified that any limitation on a fundamental right must meet the criteria of rationality, necessity and proportionality, and reasonableness. With respect to the criterion of rationality, the Supreme Court in *Joseph Perera alias Bruten Perera v. The Attorney General and Others* [1992] 1 Sri.L.R. 199 (at p. 217) observed that there must be a proximate or rational nexus between the restriction on a citizen's fundamental right and the object that is ought to be achieved by the restriction. With respect to the criteria of necessity and proportionality, the Supreme Court in *Sunila Abeysekera v. Ariya Rupasinghe, Competent Authority and Others* [2000] 1 Sri.L.R. 314 (at p. 375) found that this criterion 'involves a review of whether the restrictions are proportionate to the legitimate aim pursued'. It was also held that 'the sweeping nature of the restriction can make it over-broad and disproportionate' (atp.37Q. In terms of the criterion of reasonableness, the Supreme Court in *Wickramabandu v. Herath and Others* [1990] 2 Sri.L.R. 348 (at p. 359) held: 'If this Court is satisfied that the restrictions are clearly unreasonable,

² Human Rights Committee, General Comment No. 34 - Article 19 (Freedoms of opinion and expression), 12 September 2011, CCPR/C/GC/34, para.24.

they cannot be regarded as being within the intended scope of the power under Article 15(7)'. These standards were also recently endorsed by the Supreme Court in the **Local Authorities Elections (Special Provisions) Bill Determination**, S.C.S.D No. 01/2025-04/2025.

Therefore, each restriction on the freedom to manifest religion or belief, must be: (1) provided by law; (2) have a rational nexus to a legitimate aim; (3) necessary and proportionate in terms of meeting that aim; and (4) reasonable.

Additionally, the UN Human Rights Committee in General Comment No, 27 observes that 'restrictive measures...must be appropriate to achieve their protective function' and 'must be the least intrusive instrument amongst those which might achieve their protective function' (emphasis added).³

The Commission now turns to the application of these principles to the facts of the present case. The aforesaid healthcare assistants are from the Muslim community and have chosen to wear a head covering commonly referred to as 'hijab'. According to several credible witnesses who observed the healthcare assistants during their duties at the Hospital, the healthcare assistants had removed their regular hijab and worn scarves to cover their heads, long sleeves to cover their arms up until their wrists, and long jeans to cover their legs up to their ankles during the duty hours. The healthcare assistants who made separate complaints to the Commission clarified that they covered their heads as part of their observance of the Islamic faith and their assertion of Muslim cultural identity.

The Commission is not in a position to query whether the Holy Quran in fact requires the wearing of head coverings, but notes that the persons concerned held the belief that they were observing a command found in relevant verses in the Holy Quran and relevant Hadiths. In any event, the wearing of head coverings is neither 'bizarre' nor of a 'clearly non-religious motivation'. The Commission accordingly finds that the complainants' choice of attire, i.e., the wearing of a head covering in the form of a scarf during their duty, falls within the scope of religious 'observance', which is part of the freedom to manifest religion or belief guaranteed under article 14(1)(e) of the Constitution. It is also recalled that 'the wearing of distinctive clothing or head coverings' is an established form of 'observance' according to the UN Human Rights Committee's interpretation of the scope of article 18 of the ICCPR.

The Commission notes that Sri Lanka has a long and established history of permitting head coverings to be worn by Muslim women officers. There is no doubt that such attire falls within the scope of the freedom to manifest religion or belief guaranteed by article 14(1)(e) of the Constitution.

The next question to be considered is whether the Respondents' decision to require the Complainants to remove their scarves, long sleeves and jeans in addition to the prescribed uniform, and to later transfer them to another base hospital, amounted to a limitation on the Complainants' freedom to manifest religion or belief.

At the outset, the Respondents have failed to demonstrate that the limitation in question was prescribed by 'law'. Any public administration circular relied upon by the Respondents to justify their action does not constitute 'law' as defined in article 170 of the Constitution and as interpreted by the Supreme Court. In any event, both the 1989 Circular and 2022 Circular do not explicitly prohibit the wearing of head coverings. The 1989 Circular only prescribes what the basic uniform should be. It certainly does not prohibit long-sleeved attire, nor trousers that covers a person up to

³ Human Rights Committee, General Comment No. 27(67) - Freedom of movement (article 12), CCPR/C/21/Rev.1/Add.g, 2 November 1999, paras. 14-15.

their ankles. In fact, one could argue that such attire is consistent with the 1989 Circular. Separately, the Circular does not explicitly prevent the wearing of the basic uniform with an additional head covering in a manner that complies with the requirements of the uniform while also complying with certain religious beliefs. Therefore, the Commission finds that the limitation in question fails the test of legality at the outset.

Notwithstanding the above finding, the Commission is not convinced that the Complainants' religious attire posed any threat to any legitimate aim listed in article 15(7) of the Constitution. In any event, the Respondents have not presented any such aim as justification for the limitation and have merely cited public administration circulars in defence of their decisions.

The Commission notes that the principles of necessity, proportionality, and reasonableness dictate that when an administrative rule is capable of being interpreted and applied in a manner that is least restrictive of a fundamental right, the state authority in question is obliged to interpret and apply the rule in such a least restrictive manner. Similarly placed hospitals nearby the Respondents' hospital have applied the same circulars in a manner that does not unnecessarily, disproportionately, or unreasonably limit the rights of persons to manifest their religion or belief. By contrast, the Respondents have chosen to interpret and apply these circulars to justify a restriction on the Complainants' attire.

The Respondents' application of the circulars in the present case was impermissible, as it constituted an unnecessary, disproportionate, and unreasonable limitation on the Complainants' freedom to manifest religion or belief. The Commission concludes that the impugned restriction on the Complainants' religious manifestation, amounted to an unlawful limitation on their freedom to manifest religion or belief in violation of articles 14(1)(e) and 15(7) of the Constitution.

Separately, the Commission recalls General Comment No. 22 in which the UN Human Rights Committee opines that a limitation 'must not be applied in a manner that would vitiate the rights guaranteed in article 18' of the ICCPR.⁴ Therefore, no limitation may be imposed on the freedom to manifest religion or belief where it results in a further limitation on the freedom of thought, conscience, or religion.

The Commission notes that preventing the Complainants from engaging in a lawful occupation on account of their religious attire deprived them of a basic need, i.e., the ability to engage in decent work, and amounted to coercion that impaired their freedom to practice a religion or belief of their choice. Such coercion arises due to the fact that the Complainants are compelled (through an unnecessary, disproportionate, and unreasonable restriction on their religious attire) to deviate from their convictions, so as to avoid dire legal consequences, i.e., the denial of their ability to engage in decent work.

The close relationship between the internal (*forum internum*) and external (*forum externum*) aspects of a person's freedom of religion or belief would mean that certain unlawful restrictions on a person's religious manifestation could infringe upon the absolutely protected realm of the person's inner convictions as well. Where the consequence of a limitation on a religious manifestation is so severe that it would deprive a person of a basic need, such as the ability to engage in decent work, such limitation would invariably also infringe upon the person's freedom of thought, conscience, and religion. For a person cannot freely exercise their freedom of thought, conscience, and religion, if they face severe legal consequences for a religious observance that poses no threat to any legitimate aim. Accordingly, the Commission concludes that the impugned limitation not only violated the Complainants' freedom to manifest religion or belief, but also violated their absolute

⁴ Human Rights Committee, *General Comment No 22 – Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para. 8.

and unconditional freedom of thought, conscience, and religion, guaranteed under article 10 of the Constitution.

b. The freedom to engage in a lawful occupation

Article 14(1)(g) of the Constitution guarantees to every citizen 'the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise'.

The scope of this right has been clarified by the Supreme Court of Sri Lanka in a number of cases. Notably, in *Elmore Perera v. Major Montague Jayawickrama* [1985] 1 Sri L.R. 285, (at p. 323) it was clarified that article 14(1)(g) 'recognizes a general right in every citizen to do work of a particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice'.

The freedom to engage in a lawful occupation may be limited under articles 15(5) and 15(7) of the Constitution. Article 15(5) provides:

The exercise and operation of the fundamental right declared and recognized by Article 14(1)(g) shall be subject to such restrictions as may be prescribed by law in the interests of national economy or in relation to –

- (a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise and the licensing and disciplinary control of the person entitled to such fundamental right; and
- (b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of citizens or otherwise.

In the present case, the Respondents decided to transfer the Complainants from the Kalmunai Base Hospital, Kalmunai North on account of their religious attire. The transfer is clearly disciplinary in nature. It is recalled that the scope of article 14(1)(g) of the Constitution does not grant a citizen the right to be employed in a particular place of employment but only confers a general right. Therefore, article 14(1)(g) does not grant the Complainants the right to be occupied in a particular place of employment, i.e., Kalmunai Base Hospital, Kalmunai North.

However, it is necessary to assess whether the actions of the Respondents infringed upon or imposed an unlawful limitation upon the Complainants' general right to engage in a lawful occupation. In this regard, the Commission notes that the Respondents decided to effect a disciplinary transfer of the Complainants without any inquiry or process and on the purported basis that they had violated public administration circulars. This decision is of a very serious nature and is likely to be included in the Complainants' personal files. Such a prejudicial decision is bound to negatively impact the Complainants and could impair their ability to secure future employment in the public sector. Therefore, the Respondents' actions limit the Complainants' freedom to engage in a lawful occupation, as their future employment in the public sector would be confined to institutions that take a different view to the Respondents in terms of how to interpret certain public administration circulars. The Commission notes that, absent any formal disciplinary inquiry, the Respondents cannot rely on the reference to 'disciplinary control' in article 15(5)(a) of the Constitution. In fact, nothing in article 15(5) or article 15(7) authorizes the Respondents to impose such a limitation on the Complainants' fundamental right to the freedom to engage in a lawful occupation.

The Commission concludes that the Respondents, in taking a prejudicial decision to effect a disciplinary transfer of the Complainants, have violated their general right to the freedom to engage in a lawful occupation. Accordingly, the Commission finds that the Respondents have violated the Complainants' fundamental right guaranteed under article 14(1)(g) of the Constitution. It also notes

that the only remedy in such circumstances would be the withdrawal of the impugned prejudicial decision and the issuing of a written offer to reinstate the Complainants.

c. The rights to equality and non-discrimination

Article 12(1) of the Constitution provides: 'All persons are equal before the law and are entitled to the equal protection of the law', and article 12(2) provides: 'No citizen shall be discriminated against on the grounds of race, religion...sex...'.

Based on the foregoing analysis, the Commission is of the view that the Respondents' reliance on the public administration circulars amounted to an arbitrary and unreasonable application of the said circulars.

The Supreme Court in *Ariyawansa & Others v. The People's Bank & Others* [2006] 2 Sri.L.R. 145 (at p. 152) held: 'The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.' An arbitrary and unreasonable application of a statutory provision or a rule stemming from such provision would accordingly amount to a violation of article 12(1) of the Constitution.

The Commission is of the view that the Respondents in arbitrarily and unreasonably requiring the removal of the Complainants' scarves, long sleeves and jeans violated the Complainants' fundamental rights to equality before the law and the equal protection of the law guaranteed under article 12(1) of the Constitution.

Moreover, the Respondents' decision to transfer the Complainants was entirely arbitrary, as such decision was taken unilaterally, and without recourse to any due process, such as even a basic internal inquiry. The Commission concludes that such decision to transfer the Complainants amounts to an additional violation of their fundamental rights to equality before the law and the equal protection of the law guaranteed under article 12(1) of the Constitution.

The Commission additionally recalls the following observations of the Supreme Court in *Ajith Perera v. Minister of Social Services & Social Welfare et al* [2019] 3 Sri.L.R. 275 (at pp. 300-301):

[T]he concept of human dignity, which is the entitlement of every human being, is at the core of the fundamental rights enshrined in our Constitution. It is a fountainhead from which these fundamental rights spring forth and array themselves in the Constitution, for the protection of all the people of the country.

In the present case, it is observed that the Complainants were treated unequally compared to other healthcare assistants, and subjected to stigma, purely on account of their religious identity. Moreover, they were deprived of a basic need, i.e., the ability to engage in decent work, purely on account of their religious identity. There is little doubt that the treatment endured by the Complainants stripped them of their dignity. In these circumstances, the Commission also concludes that the Respondents violated the Complainants' inherent right to dignity, which is a constituent element of the fundamental rights guaranteed in the Constitution, including the rights to equality before the law and the equal protection of the law.

The UN Human Rights Committee in General Comment No. 18: Non-Discrimination observes that '[n]on discrimination, together with equality before the law and equal protection of the law without

any discrimination, constitute[s] a basic and general principle relating to the protection of human rights'.⁵

It is recalled that the concept of discrimination is not explicitly defined in the Sri Lankan Constitution nor in the ICCPR. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term 'racial discrimination' shall mean 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Moreover, article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women defines 'discrimination against women' to mean:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

It is also recalled that the UN Human Rights Committee in *Miriana Hebbadj v. France, Communication No. 2807/2016 (2018)*, and *Sonia Yaker v. France, Communication No. 2747/2016 (2018)* examined the French ban on the *niqāb* (a full-face veil). It concluded that, in order for a limitation to be permissible, it must be 'non-discriminatory' in addition to meeting the usual criteria of necessity and proportionality. The majority of the Committee in both cases found that the ban violated the authors' freedom of religion or belief and amounted to 'intersectional discrimination based on gender and religion, in violation of article 26 of the [ICCPR]' (para. 8.17). Similarly, in the present case before the Commission, the Respondents' decision to require the Complainants to remove their religious attire and transfer them to another hospital purely based on their religious attire amounted to intersectional discrimination on the basis of race, religion, and sex.

On the one hand, the arbitrary and unreasonable application of public administration circulars in a manner that targeted the Complainants purely based on their attire amounted to discrimination on the grounds of race and religion, given that such attire was based on their ethnic and religious identity. The Commission notes that there is no evidence that the explicit *purpose* of such arbitrary and unreasonable application was the discrimination of the aforesaid Complainants. Yet, the *effect* of such application was discriminatory, as the Complainants suffered a serious setback to a basic need, i.e., the ability to engage in decent work, solely on account of their attire.

The Commission observes that the state is specifically obliged to promote safe and inclusive work environments in which all communities, and specifically women of those communities, can work in dignity. Instead, the actions of the Respondents have contributed towards the creation of a hostile work environment for Muslim women in the public sector. The Commission is deeply concerned that such conduct can lead to intercommunal tensions and undermine national reconciliation efforts. It recalls the following conclusion in its *Report of the Inquiry into Violent Events in Digana and Environs in the District of Kandy in March 2018* (published in September 2025):

Discriminatory policies and phenomena targeting Muslim communities must be viewed as contributing towards a hostile environment that can lead to conflict. Recent examples of such policies and phenomena include unreasonable restrictions on religious manifestation, such as arbitrary restrictions on the wearing of the *hijab*...

⁵ Human Rights Committee, General Comment No. 18: Non-Discrimination, 10 November 1989, para. 1.

The Commission concludes that, by singling out the Complainants solely due to their choice of attire during their duty hours, the Respondents violated their right to non-discrimination based on race, religion, and sex, guaranteed under article 12(2) of the Constitution.

4. Recommendations

The Commission reiterates that the Respondents have violated the Complainants' fundamental rights to the freedom to manifest religion or belief, the freedom of thought, conscience, and religion, the freedom to engage in a lawful occupation, the right to equality before the law and the equal protection of the law, and the right to non-discrimination respectively guaranteed by articles 14(1)(e), 10, 14(1)(g), 12(1), and 12(2) of the Constitution.

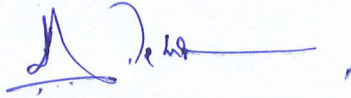
Accordingly, in terms of section 15(3)(c) and (4) of the Human Rights Commission of Sri Lanka Act, the following recommendations are made to the 1st Respondent:

- a) Issue a written interpretation of applicable public administration circulars to all administrative staff at the Kalmunai Base Hospital, Kalmunai North clarifying that any staff member who wishes to wear a head covering, long-sleeved attire, and trousers, in addition to the prescribed uniform, is permitted to do so;**
- b) Conduct a full and impartial inquiry into all allegations of harassment of the Complainants by any staff member of the Kalmunai Base Hospital, Kalmunai North;**
- c) Offer the option in writing to the Complainants to resume work at the Kalmunai Base Hospital, Kalmunai North, if they so choose to return to the Hospital;**
- d) In the event that any Complainant chooses to return to work at the Hospital, ensure that the above-mentioned written interpretation is enforced so that they are permitted to wear a head covering, long-sleeved attire, and trousers, in addition to the prescribed uniform.**

The Commission separately forwards the following recommendation to the Secretary to the Ministry of Public Administration:

- e) Issue a new circular along the lines of Public Administration Circular No. 13/2019 dated 26 June 2019 to clarify that all public officers can wear religious attire along with basic uniforms in a manner that is compliant with their religious beliefs, while ensuring their clear identification.**

As per section 15(7) of the HRCSL Act, the 1st respondent and the Secretary to the Ministry of Public Administration are also requested to report to the Commission on the progress made on implementing the above recommendations on or before 19. 11 . 2026.



Justice L.T.B. Dehideniya,
Judge of the Supreme Court (Retired),
Chairman,
Human Rights Commission of Sri Lanka.

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
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