IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Mandates in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. CASE NO. WRT/0083/24

1. M.A. Maithri Mahendran,
   126F, Lodvinwatta,
   Ihala Thabbowa,
   Naththandiya.

2. M.M. Nishantha Anura Kumara
   Manchanayake,
   Kiridiwelmada, Makulwewa.

3. K.G. Wasantha Thushara Samaranayake,
   Rajanganaya Left Bank,
   Tract 01, Saliya Ashokapura.

4. H.M. Chanaka Nilantha Herath,
   335/1, Wellawaya Road, Monaragala.

5. K.M. Piyasiri Bandujeewa,
   Ashoka Niwasa, Rilpola, Badulla.

6. D.M. Senevirathne,
   51/A, Sorabora, Mahiyanganaya.

PETITIONERS

Vs.

1. Mr. C.D. Wickramaratne,

1A. Mr. Deshabandu Tennakoon,
Inspector General of Police,
Police Headquarters, Church Street,
Colombo 01.

2. Mr. S. Hettiarachchi,

2A. Mr. Viyani Gunathilake,

2B. Mr. D.W.R.B. Seneviratne,
Secretary to the Ministry of Public Security,
Ministry of Public Security,
14th Floor, Suhurupaya, Shri Subhuthi Pura,
Battaramulla.

3. Ms. Hiransa Kaluthanthri,

3A. Mr. W.S.K. Liyanagama,
Director General,
Department of Management Services,
Room No. 343, 3rd Floor, Ministry of Finance, The Secretariat, Colombo 01.

4. Mr. W.J.L.U. Jayaweera,
Chairman.

5. Mrs. Chandrani Senaratne,

6. Mr. Gotabhaya Jayaratne,

7. Mrs. Sujatha Cooray,

8. Dr. Madura Wehalle,

9. Mr. M.S.D. Ranasiri,

10. Dr. Ananda Hapugoda,

11. Mr. Sanjeewa Somaratne,

12. Mr. Ajith Nayanakantha,

13. Dr. Ravi Liyanage,

14. Mr. Sanath Ediriweera,

15. Prof. Ranjith Senarathna,

16. Eng. R.M. Amarasekara,

17. Major Gen. (Rtd) Siri Ranaweera,

18. Mr. W.H. Piyadasa,
    Members.

19. Mrs Chandrani Senaratna,
    Secretary,
    4th to 19th Respondents are all of National Pay Commission,
    Room No. – 2-116, BMICH,
    Colombo 07.

20. Mr. H.A. Chandana Kumarasinghe,

20(a). Mr. S. Aloka Bandara,
    Director General,
    The Ministry of Public Administration,
    Independence Square,
    Independence Ave,
    Colombo 07.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Amaranath Fernando with Vishva Vimukthi, instructed by N. S. Welgama, for the Petitioners.

Rajika Aluwihare, SC, for the Respondents.

SUPPORTED ON : 22.09.2025

WRITTEN SUBMISSIONS ON : 03.10.2025 and 07.10.2025

DECIDED ON : 29.10.2025

ORDER

K. M. G. H. KULATUNGA, J.

1. The petitioners are currently attached to the Sri Lanka Police and now serving as Community Coordinating Officers. They are all graduates of universities of Sri Lanka who were recruited to the Public Service under a "Graduate Scheme" implemented in 2005. This scheme was implemented with the object of providing employment to unemployed graduates. In January 2005, 386 such graduates were designated as Community Coordinating Officers. These persons have undergone a five-month Police training, and then been attached to various Police Stations around the island.

2. At a particular point of time, the Inspector General of Police has recommended that these Community Coordinating Officers be recognised and absorbed into the Police Reserve established in terms of the Section 24 of the Police Ordinance. The said recommendation is marked and produced as P-11. This recommendation has been made to the Director General of the Department of Management Services, which was not approved and accepted but rejected by letter dated 15.12.2021 (P-15). This has also been referred to the National Pay Commission which, by letter P-14 dated 07.12.2021, informed that the Commission cannot recommend the request made by the Inspector General of Police by P-11. Accordingly, the petitioner is now, by this application, seeking the following relief:
    a. writ of *certiorari* quashing the decision contained in the letters marked P-14 and P-15;

b. writ of *mandamus* compelling the 1st, 2nd, and/or 3rd respondents to approve the recommendations at paragraph 11(i) of the letter marked P-11;
c. writ of *mandamus* compelling the 1st, 2nd, and/or 3rd respondents to implement the recommendations at paragraph 11(i) of the letter marked P-11;
d. writ of *mandamus* compelling the 1st, 2nd, and/or 3rd respondents to recognise the petitioners as members of the Police Reserve; and
e. writ of *mandamus* compelling the 1st, 2nd, and/or 3rd respondents to assign the petitioners a rank in the Police Reserve.

3. This matter was supported for notice on 22.09.2025. Thereafter, the matter was set for Order, add both the parties tendered Written Submissions on 03.10.2025 and 07.10.2025. Accordingly, this Order is pronounced on the issue of notice.

4. In support of this application, the petitioners submit that the Inspector General of Police, by virtue of Circular No. 2597/2016 dated 26.07.2016, appointed the petitioners and others as Community Coordinating Officers. It is their position that considering the duties of Community Coordinating Officers, they were placed on par with regular Police Officers. The petitioners also claim to have performed a supporting function, which, in the Police Force, was as important and akin to the functions of regular Police Officers. Then, the Community Police Division had been recognised as a separate division by the Police Gazette bearing No. 2107 dated 23.01.2019 (P-6). The argument is that the petitioners were supporting of the discharge and function of the regular Police Officers, including preventing terrorist attacks, providing intelligence and assisting in solving crime. Their position is that, in view of the nature of the duties performed, the petitioners be considered as *"members of the Police Reserve"*.

5. However, the petitioners concede that they, being members of the Police Support Service, are not reflected in the organizational structure of the Police Reserve. It is therefore claimed that they have a legitimate expectation and a right to be recognised and treated as members of the Police Reserve in terms of the Police Ordinance. Then, it is the petitioner's position that, considering a representation made by them, the then Inspector General of Police did recommend that the petitioners and others acting in that category be absorbed into the Police Reserve (*vide* P-11). This recommendation was not approved by P-14 and P-15 by the National Pay Commission, as well as the Department of Management Services, which they say was so rejected without hearing the petitioners and in violation of the rules of natural justice.

6. As opposed to this, the learned State Counsel on behalf of the respondents specifically submitted that the Police Reserve is no longer operative and active in the Police Department and that a legitimate expectation as claimed cannot arise, especially in view of the judgement of ***M. R. C. C. Ariyarathne and others vs. N. K. Illagakoon, Inspector General of Police and others*** (SC/FR/444/2012, SCM 30.07.2019), and also delay.

7. I will now consider the respective arguments of both parties. Firstly, it is necessary to ascertain if the Police Reserve is active or operative as at today. Both parties refer to the aforesaid judgement by His Lordship Justice Prasanna Jayawardena, P.C., in SC/FR/444/2012. The operative part of the said decision is as follows:

> *"At this point, it is relevant to note that the Sri Lanka Police Force [i.e.: the Regular Police Force] was established in 1866 under and in terms of the provisions of section 3 of the Police Ordinance. Section 104 of the Police Ordinance defines a "police officer" as a "member of the regular police force and includes all persons enlisted under this Ordinance." Section 20 read with section 21 (1) of the Police Ordinance makes it clear that "police officers" are appointed under the provisions of the Police Ordinance and hold the ranks of: Inspector General of Police, Deputy Inspectors General of Police, Superintendents and Assistant Superintendents*

of Police, Inspectors, Sergeants and Constables. "Police officers" appointed under the provisions of the Police Ordinance are required to wear designated police uniforms when on duty, unless the specific nature of their duties preclude the wearing of uniform.

Further, a Police Reserve was later established under section 24 of the Police Ordinance for the following purpose: "to assist the police force in the exercise of its powers and the performance of its duties." Section 25 read with section 26 (1) of the Police Ordinance state that the officers in the Police Reserve hold the ranks of Commandant, Deputy Commandant, Reserve Superintendents, Reserve Assistant Superintendents of Police, Reserve Chief Inspectors, Reserve Inspectors, Reserve Sub Inspectors, Reserve Sergeant Majors, Reserve Sergeants and Reserve Constables. Officers in the Police Reserve are also required to wear designated Police Reserve uniforms when on duty, unless the specific nature of their duties preclude the wearing of uniform.

With effect from 01st February 2006, all 27,988 Police Reserve Officers then serving in the Police Reserve were absorbed into the Regular Police Force, as evidenced by the Circular No. 2070/2008 dated 27th June 2008 issued by the Inspector General of Police marked "P16". As set out in "P16", 26,121 of these erstwhile Police Reserve Officers were absorbed into the Regular Police Force and 1527 erstwhile Police Reserve Officers were appointed to the aforesaid five newly created specialised Units of the Sri Lanka Police Force. It is evident from "P16" that these five specialised Units were to be regarded as part of the Sri Lanka Police Force. All the Officers absorbed into these five specialised Units of the Sri Lanka Police Force held the same rank as they did in Police Reserve and were mandatorily required to wear uniforms which were modelled on uniforms worn by police officers in the Regular Police Force. As the petitioners have correctly pleaded in paragraph [23] of their petition, these five specialised Units perform "supportive services" to the Regular Police Force.

However, the remaining 340 erstwhile Police Reserve Officers were not absorbed into the Regular Police Force or into the five newly created specialised Units of the Sri Lanka Police Force. Instead, these 340 persons were absorbed into a newly established "Civil Support Services Unit" ["සිවිල් සහායක සේවා ඒකකය"] of the Department of Police."

8. Both parties adverted to the above portion of the said judgement. The petitioner's position is that the said judgment dealt with facts materially different and is not applicable. What is relevant is the pronouncement and the declaration as to the current composition and status of the Police Force. His Lordship has identified four components of the Police Force: (i) the Regular Police Force; (ii) the Police Reserve; (iii) Support Services to the Regular Police Force (to be regarded as a part of the Regular Police Force); and (iv) Civil Support Service (which consists of civilians who are not Police Officers). As submitted by the learned State Counsel, the petitioners are from the civil support services unit, which is the last category, which consists of civilians who are not Police Officers. That being so, the relevant finding is that the Police Reserve is no longer active or functional. It is held that with effect from 01.02.2006, officers of the Police Reserve were absorbed into the regular force and other specialised units of the Sri Lanka Police.

9. As evident by the aforesaid decision, all officers and others of the Police Reserve had been absorbed into the Regular Force and to five specialised units that perform specialised services, which are: (i) Police Medical Service; (ii) Police Engineering Service; (iii) Police Technical Service; (iv) Police Support Service; and (v) Police Special Service. That being so, from 01.02.2006 up until today, there is no active or operative Police Reserve in that form for the petitioners to be absorbed into, as recommended by P-11. This recommendation is made in 2021 and will require the re-establishment of the Police Reserve in accordance with Sections 23, 24, and 25 of the Police Ordinance. The recommendation is to create 97 combined posts, for which there would be a prospect of promotions. The contention on behalf of the petitioners is that the 1st and 3rd respondents had made specific recommendations in respect of 40 officers, which includes the petitioners, to be appointed to posts created in the form of Sub Inspectors in the Police Support Service [as "Community Co-ordinating Officers" (ප්‍රජා සම්බන්ධීකරණ නිළධාරී)].

10. Thus, the recommendation, if at all, was to create certain posts and upon so creating, to consider the appointment or absorption of the petitioners and others to such posts. In these circumstances, this recommendation *per se* cannot create or give rise to a legitimate expectation to be appointed to such post. One cannot have an expectation to be appointed to a post that is non-existent at that point of time. Therefore, the recommendation in the first instance is to create a new post within the Police Force. That would constitute a restructuring and a creation of certain posts over and above the existing cadre. It is a matter of policy and process which involves the consideration of several other factors. These factors have been elaborately considered in P-14 and P-15. On a perusal of the said reasoning, it does not appear to be unfounded or unreasonable to have not approved P-11. On the contrary, the difficulty and impracticality of creating such posts is evident and apparent. At this juncture, what is relevant in context is not the practicality or the desirability of establishing such posts but the fact that the petitioners could not have a legitimate expectation of being appointed or being absorbed into a position or post that was non-existent. Accordingly, I hold that the petitioners' assertion of a legitimate expectation is premature, presumptuous, and misconceived.

11. In law, the meaning of a "legitimate expectation" has been adverted to in many a judicial decision. Hilaire Barnett's 'Constitutional and Administrative Law' (10th Ed., at pg. 631) describes a legitimate expectation as follows:

> *"A legitimate expectation will arise in the mind of the complainant wherever he or she has been led to understand – by the words or actions of the decision maker – that certain procedures will be followed in reaching a decision.... Where such expectations have been created, the decision maker is not free simply to ignore the procedures which have been indicated."*

A legitimate expectation may be procedural or substantive. Prof. Craig, in 'Administrative Law' (7th ed. at pg. 677), defines procedural and substantive legitimate expectation as follows:

> *"The phrase '**procedural legitimate expectation**' denotes the existence of some process right the applicant claims to possess as the result of a promise or behaviour by the public body that generates the expectation ….. The phrase **'substantive legitimate expectation'** captures the situation in which the applicant seeks a particular benefit or commodity, such as a welfare benefit or a license, as the result of some promise, behaviour or representation made by the public body."*

The ideology of 'substantive legitimate expectation' originated in the landmark case of ***R vs. Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd*** [1995] 2 All ER 714, where Sedley, J., held as follows:

> *"While policy is for the policy-maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern."*

The abovementioned dictum has also been cited with approval in ***Dayaratne vs. Minister of Health and Indigenous Medicine*** (1999) 1 SLR 393, ***Nimalsiri vs. Fernando*** (SC/FR/256/2010, decided on 17th September 2015), and in ***M. R. C. C. Ariyarathne and others vs. N. K. Illagakoon, Inspector General of Police and others*** (SC/FR/444/2012) (supra).

12. However, Sir William Wade & Prof. Christopher Forsyth's 'Administrative Law' (11th Ed., at pg. 454, '*The Ultra Vires Expectation*') states as follows:

> *"An expectation whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation. It is inherent in many of the decisions, and express in several, that **the expectation must be within the powers of the decision-maker before any question of protection arises**. There are good reasons why this should be so: an official cannot be allowed in effect to rewrite Acts of Parliament by making*

promises of unlawful conduct or adopting an unlawful practice." [emphasis added]

In ***Siriwardane vs. Seneviratne*** and four others [2011] 2 SLR 1, Dr. Shirani Bandaranayake, J. (as her Ladyship then was), held that,

"A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question."

13. Accordingly, in the present application, in the absence of an existing position, the petitioners could, if at all, only have a distant hope based on the recommendation of the Inspector General of Police that a new cadre, position, or post be created. The creation of the posts as contemplated is not within the sole power and ambit of the Inspector General of Police, and thus, there can be no legitimate expectation. As is apparent from the communications, P-11, P-14, and P-15, the creation of a new cadre, position, or post involves the consideration of many factors. That being so, the petitioners, at most, would only have a hope of the creation of such post as recommended by the Inspector General of Police. This hope or wish could be an expectation only if the Inspector General of Police had such a power and if there were no variables or other considerations that would intervene in giving effect to the approval of such recommendation. In ***Union of India and others vs. Hindustan Development Corporation and others*** (1994 AIR 988), decided on 15.04.1993), K. Jayachandra Reddy, J., observed as follows:

"*For legal purposes, the expectation cannot be the same as anticipation.* ***It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right****. However earnest and sincere a wish, a desire or a hope may be, and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation.*

> *The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."*

The petitioners, in my view, ought to have known or be deemed to have known the procedure and process of creating a new post and the relevant consideration in doing so. When considered in its totality and the context, the petitioners had no more than a wish or hope which, in this instance, cannot, by any stretch of the imagination, be elevated to an expectation that which is legitimate.

14. The prayers *(b)*, *(c)* and *(e)* are prayed against the Inspector General of Police, the Secretary to the Ministry of Public Security, and the Director General of the Department of Management Services. By prayer *(c)* and *(d)* the petitioner is seeking writs of *mandamus* compelling the implementation of the recommendation made by paragraph 11 (i) of letter P-11. Similarly, by prayer (d), the petitioner is seeking a *mandamus* against the same respondents to recognise the petitioners as members of the Police Reserve. Further, by prayer *(e)*, the petitioners are seeking a *mandamus* against the same respondents to assign the petitioners to the Police Reserve.

15. The starting point is that the 1st respondent has made a recommendation which the 3rd and 4th respondents have not approved. The 2nd and the 3rd respondents cannot thus approve the recommendation of the 1st respondent. The 1st respondent has submitted P-11 to the Director General of the Department of Management Services, which the 3rd respondent has not approved, in view of the determination made by the National Pay Commission by P-14. There is no relief sought against the 4th respondent. In these

circumstances, as P-15 is based on P-14, it is superfluous and futile to grant the relief as prayed for by prayers *(c)*, *(d)*, and *(e)* as prayed for. Once again, prayer (d) cannot be granted in view of the decision in **SC/FR/444/2012**, where the Police Reserve now stands dissolved and non-existent. In these circumstances, the relief prayed for by prayers (b), (c), (d), and (e) cannot be granted and are futile.

16. The petitioners are seeking to quash P-14 and P-15 dated 02.12.2021 and 15.12.2021 respectively. Similarly, the petitioner is now seeking to give effect to the recommendations of P-11, dated 18.03.2021, by way of a *mandamus*. This application has been filed on 02.02.2024. This is over two years even after P-14 and P-15. This certainly is a delay, for which there is no explanation.

17. It is settled law that an unexplained delay will disentitle a petitioner from seeking relief by way of writ. In ***Biso Menika vs. Cyril de Alwis and Others*** [1982 (1) SLR 368], Sharvananda J. (as his Lordship then was) observed that;

> *"A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver.* ***The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity*** *and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time."* [emphasis added].

In ***Gunasekera vs. Abdul Latiff*** [1995] 1 Sri L.R at page 235, Ranaraja, J., defined delay or laches as below:

> *"The word 'laches' is a derivative of the French verb 'Lacher', which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do (Stroud's Judicial Dictionary 5th Ed., pg. 1403). It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt* (the law helps those who are vigilant, not those who sleep on their rights)*. The neglect to assert one's rights or the acquiescence in the assertion or adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time (Mozley & Whiteley's Law Dictionary, 10th Ed., pg. 260)."*

Further, this Court in ***Sarath Hulangamuwa vs. Siriwardene, Principal Vishaka Vidyalaya, Colombo, and five others*** [1981 (1 Sri LR 275)], held that:

> *"Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the application… The laches of the petitioner must necessarily be a determining factor in deciding this application for Writ as the Court will not lend itself to making a stultifying order which cannot be carried out."*

18. In the above circumstances, the petitioners have certainly been waiting for over three years and now has preferred this application. By any standard, and in relation to the circumstances of the present application, the said delay is significant and relevant. It is certainly laches in its fullest sense. This is further compounded by the absence of any semblance of explanation or reason placed before this Court to explain the said lapse of time. If at all, the only probable reason is that the petitioners are unaware. It is however admitted that the petitioners have, at least by June 2022, received notice and information on the outcome of the recommendation made by the Inspector General of Police as they have received the information requested by the petitioners under the Right to Information Act, marked P-13(a). That being so, yet for all, the petitioners have waited almost one year and eight months thereafter

to institute the action. Accordingly, the petitioners are guilty of laches and delay, which disentitles them to the relief as prayed for.

19. In the above circumstances, I find that as a threshold matter, the petitioners have failed to satisfy this Court of any ground that entitles the petitioner to seek the relief as prayed for. This includes the failure of the petitioners to establish a *prima facie* case in their favour, or, for that matter, that there is a fit matter to be looked into to be entitled to the issuing of notices as prayed for.

20. Further, in view of the fact that the Reserve Police Force is now defunct and non-operational, the relief prayed for is superfluous and futile. The petitioners are not entitled to claim any right based on a legitimate expectation as aforesaid. Thus, I see no basis in law or otherwise to grant notice. Accordingly, the granting of notice is refused, and the application is accordingly rejected.

Application dismissed.

JUDGE OF THE COURT OF APPEAL