JAYASINGHE
v.
THE ATTORNEY GENERAL AND OTHERS

SUPREME COURT.
FERNANDO, J.
PERERA, J. AND
WIJETUNGA, J.
S.C. APPLICATION NO. 86/94
OCTOBER 3, 1994.

Fundamental Rights – Prolonged delay in commencing and concluding disciplinary inquiry against interdicted employee – Are disciplinary proceedings "administrative action"? – Equal protection of the law – Article 12(1) of the Constitution – Protection of liberty – Protection of livelihood – Is it always necessary to produce evidence of other similar instances to prove infringement to equal protection of the law – Co-operative Employees' Commission Act No. 12 of 1972 and Regulations – Co-operative Employees' Commission.

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 between 16.3.94 to 16.9.77. No charge sheet was served on him for 14 years until 1.1.92. The disciplinary proceedings were concluded only in August 1994 after the court had given leave to proceed. By letter dated 2.9.94 he was informed that his services were terminated with effect from 14.10.77.

Two sets of proceedings, criminal and civil, intervened: Two prosecutions for criminal breach of trust, were launched but withdrawn in December 1981 and February 1982 and an arbitration commenced in 1979 and concluded with an award on 16.12.81 holding petitioner responsible for shortages to the value of Rs.121,691.89. The petitioner appealed but on 6.8.92 the Registrar of Co-operative Societies dismissed the appeal and affirmed the award. The petitioner then applied for writs of Certiorari and Mandamus to the Court of Appeal and this application is still pending.

The petitioner alleged political victimization contrary to Article 12(2).

The 2nd respondent took a preliminary objection that the application was time barred.

Held:

1. The 2nd respondent has not given any satisfactory explanation for the delay in commencing and concluding the disciplinary proceedings. A charge sheet was issued on 1.1.92 and awarded on 15.10.92.

2. The petitioner cannot complain of political victimization because the law at that time provided no remedy. Articles 12(2) and 126 do not apply retrospectively.

3. It was by no means obvious that the application was time barred, and it is difficult to identify the precise date when prolonged delay might become denial of equal protection; indeed it might well have been argued that, this was a continuing infringement; or that the dismissal itself would have been an infringement, and therefore the complaint made was of an infringement which was then imminent. Hence the objection was not permitted.

4. Delays in regard to criminal proceedings are not delays by executive or administrative action. So are arbitration proceedings as they are judicial in nature. The disciplinary proceedings stand on a different footing. The powers of a Co-operative Society in relation to its employees are subject to the statute, the regulations made thereunder and the directions of the Co-operative Employees Commission established under the Co-operative Employees' Commission Act No. 12 of 1972. Disciplinary action and dismissal are subject to appeal or review by the Commission. Employees of Co-operative Societies thus enjoy a status, in relevant respects similar to that of public officers; their position is significantly different to that of private sector employees. Disciplinary action is governed by statutory provisions rather than by contract. Disciplinary action by a Co-operative Society – interdiction, framing charges, holding inquiries and dismissal – is "administrative" action within the meaning of Article 126.

5. Article 12(1) should not be restricted to the protection only of liberty; it must be extended to the protection of livelihood. The Constitution and the law provide safeguards for liberty. In the same way the Co-operative Employees' Commission Act and regulations provides "protection" for the livelihood of an employee. Some of those safeguards are set out in the Co-operative Employees' Commission (General) Regulations 1922. An employee is assured of protection for his livelihood: notice of the charges on which he risks deprivation of his livelihood; an opportunity to reply and to defend himself; a fair inquiry procedure and a right of appeal. The petitioner's complaint is not that he was directly deprived of those safeguards; but only of the delay in the proceedings. Justice delayed is justice denied: for the very good reason that delay may result in the denial of the substance of a fair trial, although all the forms are solemnly observed. Delay may result in essential witnesses and documents becoming unavailable, and recollections slowly fading; in legal expenses gradually becoming even more unbearable and in sapping the will to fight on for justice. All the safeguards may be there as a matter of form, but the substance of the protection of the law will be lacking. Protection delayed is protection denied.

6. All delay is unacceptable. As to what amount of delay would be inordinate, what is a reasonable time, may vary from case to case. But in regard to employees interdicted without pay pending inquiry, no legislative intention to acquiese in proceedings being dragged on for years can be assumed. Interdiction without pay prevents an employee accepting employment elsewhere

and where it lasts a long period seriously prejudices livelihood. A subsidiary consideration is that the petitioner could not seek his remedy in the Labour Tribunal because this right was excluded by section 39 of the Co-operative Employees' Commission Act until that section was amended by Act, No. 51 of 1992.

7. There has therefore been a denial of one important protection which the law provided for the Petitioner, upon interdiction without pay, in respect of his livelihood that disciplinary proceedings, which could have resulted in depriving him of his livelihood, should have been completed without inordinate delay. Howsoever the boundary between permissible and unacceptable delay is demarcated; the delay of 16 years which had occurred when the petitioner came into Court was manifestly excessive.

8. When the petitioner was interdicted the petitioner was in the prime of his life and would have passed the normal age of retirement by the time the validity of his dismissal was determined in a court or tribunal of first instance. Delay has robbed him, and his family of half his working life.

9. It is not enough for the petitioner to show that he has been denied the protection of the law. He must also show that he has been denied **equal** protection – that he was treated less favourably than others similarly situated. The petitioner has not produced any evidence of delays in similar cases. But this is not an inflexible principle of universal application. The facts of each case must be considered. Where an employee alleges a denial of equal protection because he was compelled to participate in a disciplinary inquiry without ever being told what the charges against him were, no court would require evidence to prove at least one other contrary instance. The court must take judicial notice that ordinarily – and not merely in a few instances – charges are disclosed prior to inquiry. Likewise, that however serious the laws delays, it does not take over 10 years for a charge sheet to be served, and over 15 years for a disciplinary inquiry to be completed.

10. The Petitioner's fundamental right to the equal protection of the law has been infringed and he is entitled to relief. Liability in respect of shortages and whether termination was justified are questions to be decided in other proceedings. His success or failure in those proceedings must not affect these proceedings.

Cases referred to:

1. *Sebastian Fernando v. Katana* MPCS [1990] 1 Sri LR 342.
2. *Hakmana MPCS v. Fernando* [1985] 1 Sri LR 272.
3. *Perera v. Jayawickreme* [1985] 1 Sri LR 285.
4. *Weligama MPCS v. Daluwatte* [1984] 1 Sri LR 195.

APPLICATION for relief for the infringement of the fundamental right of equal protection of law guaranteed by Article 12(1) of the Constitution.

P. K. E. Perera for petitioner.
Samith de Silva SC for 1st and 3rd respondent.
Tudor Dharmadasa for 2nd respondent.
B. V. S. Silva for 4th respondent.

Cur. adv. vult.

November 04, 1994.

FERNANDO, J.

This application involves the question whether unexplained and inordinate delay by a co-operative society in commencing and concluding disciplinary proceedings against an employee, interdicted without pay, amounts to a denial of the equal protection of the law guaranteed by Article 12(1).

INVOKING THE JURISDICTION OF THIS COURT

The Petitioner had been an employee of the 2nd Respondent co-operative society at least since 1972 (and perhaps even from 1962). He made his complaint in an affidavit dated 29.3.94 to this Court. This was not an application in conformity with Rule 44(1). Order was made that it be treated as a "special" application. This order was referable to Rule 44(7) of the Supreme Court Rules, 1990, though this was not specified. The matter came up on 2.5.94; the Petitioner was unrepresented, and the Court inquired from Mr. P. K. E. Perera, Attorney-at-Law, who was present in Court, whether he could assist the Petitioner. In the best traditions of the legal profession, Mr. Perera consented, and thereafter assisted the Court, presenting his client's case with competence and restraint. Further pleadings were thereafter filed. All these steps were in substantial conformity with Rule 44(7) of the Supreme Court Rules, 1990, and Rule 2(b) of the Supreme Court (Assigned Counsel) Rules, 1991, and no objection has been taken on the ground of any procedural defect.

On 21.6.94 leave to proceed was granted. State Counsel who appeared on notice, on behalf of the Attorney-General, undertook to take steps to have the disciplinary inquiry completed.

THE FACTS

The Petitioner was a storekeeper employed by the 2nd Respondent. He was interdicted by letter dated 14.10.1977 without a stated reason, and without pay. But it is known that he is alleged to have been responsible for shortages at four places where he had worked between 16.3.1974 and 16.9.1977.

No charge sheet was served on him for over 14 years, until 1.1.92. It is that delay which is his principal ground of complaint. Thereafter, the disciplinary proceedings were concluded only in August 1994, after this Court had granted leave to proceed. He was informed by letter dated 2.9.94 that his services had been terminated with effect from 14.10.77. This delay too has some relevance to the Petitioner's claim that the equal protection of the law has been denied to him.

Two sets of proceedings, criminal and civil, intervened. In consequence of complaints made to the Police in October 1977, two prosecutions for criminal breach of trust were launched in the Magistrate's Court of Colombo; these were withdrawn in December 1981 and in February 1982. The dispute between the 2nd Respondent Society and the Petitioner was referred to arbitration under section 58 of the Co-operative Societies Law, No. 5 of 1972: those proceedings commenced in 1979, and the arbitrator made his award on 16.12.1981, holding the Petitioner responsible for shortages to the value of Rs. 121,691.89/-; the Petitioner appealed, having been compelled to deposit one-tenth of the amount of the award, in view of the relevant regulation (as to the validity of which I expressed serious doubts in *Sebastian Fernando v. Katana MPCS* [1], particularly as it might operate to deny the *bona fide* exercise of the right of appeal given by the principal enactment). On 6.8.92, the Registrar of Co-operative Societies dismissed the Petitioner's appeal and affirmed the award. The Petitioner then made an application to the Court of Appeal for Certiorari and Mandamus, and that application is still pending.

The Petitioner made some effort to get matters expedited. He has produced a copy of a letter dated 10.3.83, by which he complained

of the delay in regard to the disciplinary inquiry, to the Co-operative Employees' Commission, the 3rd Respondent, established under the Co-operative Employees' Commission Act, No. 12 of 1972. The 3rd Respondent, however, says that the first intimation it had of the delay in those proceedings was on 9.7.91 when the Presidential Secretariat sent it a copy of a letter dated 8.4.91 which the Petitioner had sent to the President. After making some inquiry from the 2nd Respondent, on 6.12.91 the 3rd Respondent directed the 2nd Respondent to complete the proceedings by 15.3.92. Thereafter the Petitioner wrote to the Co-operative Employees' Commission of the Western Province, the 4th Respondent, on 17.6.93, complaining of the delay, but despite correspondence over the next six months, the 4th Respondent did not direct the 2nd Respondent to conclude the inquiry. In regard to his pending appeal to the Registrar of Co-operatives, the Petitioner has stated in his application to the Court of Appeal that the appeal was delayed because the officer dealing with it had some difficulty in reading the transcript of the proceedings; and that he made several complaints in this respect, and even to the Parliamentary Petitions Committee. Even after the problem regarding the transcript was resolved, the appeal was not dealt with expeditiously.

The 2nd Respondent has not given any satisfactory explanation for the delay in commencing and concluding the disciplinary proceedings. A charge sheet was first issued only on 1.1.92; the Petitioner submitted his explanation; and the inquiry then commenced. The charge sheet was amended on 15.10.92. Apparently because of ill-health, the inquiry had to be resumed before another officer, and was not concluded – despite complaints to the President and to Parliament – even by 29.3.94 when the petitioner complained to this Court.

POLITICAL VICTIMIZATION

The Petitioner has alleged that his interdiction was motivated by political victimization, contrary to Article 12 (2). However, that was in October 1977, and the Petitioner cannot complain of that for many reasons: the law at that time did not provide a remedy, the then

Supreme Court had no jurisdiction in respect of such a complaint, and Articles 12(2) and 126 do not apply retrospectively to acts done before the 1978 Constitution. Leave to proceed was not granted in respect of Article 12(2), and I make no finding on that issue.

PRELIMINARY OBJECTION

The objection that the application was out of time had been taken in the affidavit filed on behalf of the 2nd Respondent. Although this was a preliminary objection which should have been taken at the commencement of the hearing, learned Counsel for the 2nd Respondent failed to do so, and mentioned it only towards the end of the submissions on behalf of the Petitioner. It was by no means obvious that the application was time-barred, and it is difficult to identify the precise date when prolonged delay might become denial of equal protection; indeed, it might well have been argued that this was a continuing infringement; or that the dismissal itself would have been an infringement, and therefore that the complaint made in March 1994 was of an infringement which was then only imminent. In those circumstances, we did not permit the objection to be taken.

EXECUTIVE OR ADMINISTRATIVE ACTION

Learned Counsel for the 2nd Respondent submitted that in any event the Petitioner's grievance was outside the scope of Article 126 because the disciplinary proceedings taken (or omitted) by the 2nd Respondent did not constitute "executive or administrative" action. It is true that many of the duties, and obligations of a co-operative society arise from contract – as between members *inter se*, or as between members and the society, or as between the society and third parties; and many of its functions are purely commercial. All these probably involve no "executive or administrative" action. However, a co-operative society enjoys certain privileges conferred by the executive; thus section 22 of the Co-operative Societies Law, No. 5 of 1972, empowers the Minister by order to compel producers, even if not members of a co-operative society, to sell all or any part of their produce to or through that society.

But the question for decision now is whether the delays which the Petitioner complains of, were caused by "executive or administrative" action. Delays in regard to the criminal proceedings are clearly excluded. The arbitration proceedings were also judicial in nature (see S.C. References Nos. 1-17/91, S.C.M. 27.3.92), and those delays too cannot be the subject of complaint in proceedings under Article 126. However, the disciplinary proceedings stand on a different footing. The Co-operative Employees' Commission established by Parliament consists of members appointed by the Executive; in regard to appointment, dismissal and disciplinary control, it has powers which are in some ways comparable to the Public Service Commission, though certainly not as extensive. The Co-operative Employees' Commission Act, No. 12 of 1972, was enacted to "make special provision in respect of employees of co-operative societies"; and the Commission has power under section 11 to determine all matters regarding recruitment and promotion (including qualifications, examinations, salary scales, and terms and conditions of service), and the procedure in regard to disciplinary action; to call upon any society to complete disciplinary inquiries within a time stipulated by it, and to hear appeals arising from disciplinary orders. Section 23 provides that no employee shall be dismissed or punished except in accordance with the provisions of the Act and the regulations made thereunder.

The powers of a co-operative society in relation to its employees are thus subject to the statute, the regulations made thereunder, and the directions of the Commission; disciplinary action and dismissal are subject to appeal or review by the Commission. Employees of co-operative societies thus enjoy a status, in relevant respects similar to that of public officers; their position is significantly different to that of private sector employees. Disciplinary action is governed by statutory provisions rather than by contract.

I hold that disciplinary action by a co-operative society – interdiction, framing charges, holding inquiries, and dismissal – is "administrative" action within the meaning of Article 126.

EQUAL PROTECTION OF THE LAW

The equal protection of the law is perhaps most significant in relation to criminal law and procedure, because there a liberty is at risk. But liberty without livelihood is no better that livelihood without liberty, and in the absence of plain words in the Constitution, restricting Article 12(1) to the protection only of liberty, I hold that it extends to the protection of livelihood.

There is no doubt that the "protection" here claimed is the protection "of the law" (and not of contractual or property rights). Because what the Petitioner complains of is the denial of rights under the Act and the regulations.

What "protection" means in relation to liberty is an useful guide also in regard to livelihood. The Constitution and the law provide safeguards for liberty. Thus Article 13 provides against arbitrary deprivation of liberty: by allowing safeguards such as legal representation, and a fair trial by a competent court. The Code of Criminal Procedure Act provides safeguards such as making the charges known to the accused, the manner of answering the charges, and the conduct of a criminal trial. Such safeguards constitute the "protection" which the law extends for liberty. In the same way, the Co-operative Employees' Commission Act and the regulations provide "protection" for the livelihood of an employee. Some of those safeguards are set out in the Co-operative Employees' Commission (General) Regulations, 1972:

> CHAPTER III
>
> REGULATIONS GOVERNING THE CONDUCT OF CO-OPERATIVE EMPLOYEES
>
> . . . . . .
>
> 69. The Commission may frame Rules specifying other situations to regulate the conduct of those connected with or

employed in Co-operative Societies to enable them to maintain high standards of honesty and probity, including situations where employees are arrested for debt or are declared insolvent.

. . . . . .

CHAPTER IV

MISCONDUCT

73(1) Subject to such Rules as may be framed by the Commission the Management of the co-operative society shall be responsible for initiating disciplinary inquiries against employees suspected or alleged to be guilty of misconduct.

(2) Such inquiries may be initiated whether any criminal proceedings are taken or not and shall be proceeded with and a decision given irrespective of the progress of any ... criminal case.

(a) MINOR OFFENCES

74(1) Where the misconduct is of a minor nature, the charge may be stated in writing ...

(2) Where the misconduct is of a minor nature ... and it is necessary to call witnesses ... the Board of Management ... may nominate a senior official of the Society to hold an inquiry and submit a report ...

(3) In such inquiries as are referred to in Regulation 74(1) above the Inquiry Officer may follow such procedure as he thinks appropriate provided that the following principles are adopted:

(a) that the accused employee is informed in writing what the alleged offences are;

(b) the accused officer or his representative is allowed to examine and if necessary, take copies of any documents that may be used in evidence against him;

(c) the accused employee or his representative is allowed to ask questions of witnesses ...;

(d) the accused employee or his representative is allowed to produce witnesses and/or documents in his defence.

75. The evidence given at the inquiry shall be taken down in writing by the Inquiry Officer ...

76. The Inquiry Officer having inquired into the matter will forward his report thereon ...

77. Where the Board of Management does not take action under Regulation 73(1) above, or where urgent action is necessary, the General Manager ... may exercise these functions ... In doing so the General Manager may hold the inquiry himself or nominate someone else.

78. Where an employee desires witnesses to be summoned ...

79. ... the Inquiry Officer shall not be bound by the rules of evidence ...

80. The Inquiry Officer shall also endeavour to complete the inquiry as quickly as possible and in any case not later than one month from the 1st date of inquiry. Where for any reason completion within one month is not possible he shall report the matter to the Board of Management and in any case the inquiry shall not exceed two months from the 1st date of inquiry without the express permission of the Commission.

81. Where an employee fails to answer any charges ... he shall be deemed to accept the truth of the charges ...

82. The Board of Management may impose such punishment as it considers appropriate if the employee is found guilty.

83. The Commission may call for the record ...

(b) GRAVE OFFENCES

84. Where the employee is suspected or alleged to be guilty of grave misconduct as specified in Appendix II a charge shall be served on him and his explanation called for within a reasonable period of time, which shall not exceed six weeks.

85. Where the employee admits guilt to any of the charges, the Board of Management may either proceed to take action on the admission or decide to hold an inquiry.

86. Before an inquiry is held the accused employee shall be given a list of the witnesses ... [and] a list of the documents and informed where [they] may be inspected ...

87. In any inquiry that is held the Inquiry Officer shall follow the principles as laid down in regulation 69(3).

88. ... the Board ... may ... interdict an employee ...

89. The Commission may call for the record and take such action as it considers necessary in terms of Regulation 77 above.

An employee is thus assured of protection for his livelihood: notice of the charges on which he risks deprivation of his livelihood; an opportunity to reply and to defend himself; a fair inquiry procedure, and a right of appeal.

The Petitioner's complaint is not that he was directly deprived of those safeguards: but only of the delay in the proceedings. It is trite, but nevertheless true, that justice delayed is justice denied: for the very good reason that delay may result in the denial of the substance of a fair trial, although all the forms are solemnly observed. Delay may result in essential witnesses and documents becoming unavailable, in recollections slowly fading, in legal expenses gradually becoming ever more unbearable, and in sapping the will to fight on for justice. All the safeguards may be there as a matter of

form, but the substance of the protection of the law will be lacking. The aim of the protection of the law is to ensure justice, and so when there is inordinate delay, it can equally truly be said: protection delayed is protection denied.

All delay is unacceptable, but that is not enough. What amount of delay is to be regarded as inordinate ?

There appears to be a lacuna in the Regulations: although they set out in fair detail the inquiry procedure in respect of minor offences, similar provision is lacking for grave offences. Regulation 87 seems to have been intended to incorporate some, if not all, of the procedural provisions set out in Regulations 74 to 80, but unfortunately it refers to a non-existent Regulation 69(3). (There is another mistake in Regulation 89, which makes reference to Regulation 77 instead of Regulation 83).

Regulation 73 makes it clear that the 2nd Respondent was not obliged to defer disciplinary action until the conclusion of criminal proceedings. In the case of grave offences, Regulation 84 requires an employee to submit his reply to the charge sheet within a "reasonable time", and goes on to indicate that a delay of over six weeks would not be reasonable. If so, the Regulations could not have considered a delay of 14 years to be "reasonable" or permissible for serving a charge sheet: and I cannot believe that the Regulations contemplated that it would take more than a few months to serve a charge sheet. In the case of minor offences, Regulation 80 discloses an intention that a disciplinary inquiry be completed within a matter of months; and further delay requires the permission of the Commission. Even assuming that Regulations 74 to 80 have not been made applicable to grave offences, it would be quite unreasonable to assume that there was no desire for comparable speed in regard to grave offences. Section 11(1) (e) of the Co-operative Act gives power to the Commission to call upon a co-operative society to complete disciplinary inquiries within a time to be stipulated by it, and that is referable to a legislative intention that disciplinary proceedings should be concluded expeditiously. The 3rd Respondent Commission gave such a direction to the 2nd Respondent on 6.12.91 that the

proceedings should be completed by 15.3.92, but even two years later, when the Petitioner came to this Court, the proceedings were still pending.

What is a reasonable time may vary from case to case. But in regard to employees interdicted without pay pending inquiry, I cannot assume a legislative intention to acquiesce in proceedings being dragged on for years. In this connection *Hakmana MPCS v. Ferdinando* [2], is of some relevance. It was held that Mandamus did not lie to enforce compliance with a circular issued by the 3rd Respondent Commission in 1973, which provided for payment of half-salary to an interdicted employee if disciplinary proceedings had not been completed in six months; indeed, doubts were expressed as to the power of the Commission to issue such a circular. That circular has not been produced as a document in this case, nor is it known whether it was applicable to the Petitioner. However, that circular – even if unauthorised and unenforceable – does show that, consistently with a legislative desire for expedition, the Commission considered that, in general, six months was sufficient for a disciplinary inquiry. That does not mean that delay beyond six months is unreasonable or inordinate, but it does indicate that permissible delay, for this purpose, must be reckoned in months and not years.

Another relevant circumstance is that it may well be a breach of the contract of employment – warranting another charge sheet – for an employee under interdiction to accept employment elsewhere. Thus interdiction without pay for a long period seriously prejudices livelihood.

A subsidiary consideration is that the Petitioner had no remedy in a Labour Tribunal. Learned Counsel for the 2nd Respondent strenuously contended that the Petitioner could have applied to a Labour Tribunal on the basis of a constructive termination. However, learned Counsel for the 4th Respondent drew our attention to section 39 of the Co-operative Employees Commission Act, which excluded that right, until that section was amended by Act No. 51 of 1992.

I therefore hold that there has been a denial of one important protection which the law provided for the Petitioner, upon interdiction

without pay, in respect of his livelihood: that disciplinary proceedings, which could have resulted in depriving him of his livelihood, should have been completed without inordinate delay. I make no attempt to demarcate the dividing line, between permissible and unacceptable delay: howsoever that boundary is demarcated, in this case it is clear – as night from day – that the delay of 16 years which had occurred when the Petitioner came into Court was manifestly excessive. As to the effect of that delay, it will be seen that the Petitioner when interdicted was yet in his prime, and will have passed the normal age of retirement by the time the validity of his dismissal is determined in a court or tribunal of first instance. Delay has robbed him, and his family, of half his working life.

It is not enough for the Petitioner to show that he has been denied the protection of the law. He must also show that he has been denied **equal** protection – that he was treated less favourably than others similarly situated. Since the Petitioner has not produced any evidence of the delays in similar cases, it is contended on behalf of the 2nd Respondent (relying on *Perera v. Jayawickreme* [3]), that the Petitioner has failed to prove this essential ingredient. I doubt whether that decision must be regarded as laying down an inflexible principle of universal application; the facts of each case must be considered. If an employee alleges a denial of equal protection because he was compelled to participate in a disciplinary inquiry without ever being told what the charges against him were, would a Court demand evidence to prove at least one other contrary instance? I think not. The Court must take judicial notice, that ordinarily – and not merely in a few instances – charges are disclosed prior to inquiry. Likewise, that however serious the law's delays, it does not take over ten years for a charge sheet to be served, and over fifteen years for a disciplinary inquiry to be completed. However, the judgment of this Court in *Hakmana MPCS v. Ferdinando* confirms what I would have been prepared to assume: there a charge sheet was issued within six months. In *Weligama MPCS v. Daluwatte* [4], a charge sheet, though delayed, was issued in eight years.

I therefore hold that the Petitioner's fundamental right to the equal protection of the law has been infringed.

RELIEF

Whether the Petitioner is liable to pay any sum to the 2nd Respondent in respect of shortages, and whether his termination is justified, are questions to be decided in other proceedings in other courts and tribunals. His success or failure in those proceedings must not affect these proceedings, and *vice versa*. The Petitioner has already been denied the equal protection of the law, and for that he is entitled to relief, independent of his prospects of success in other proceedings.

The 2nd Respondent has not given any reason for the delay. Even if I were to make every possible allowance, in favour of the 2nd Respondent, and to assume, contrary to Regulation 73(2), that there was some justification for awaiting the outcome of the criminal proceedings, and the arbitrator's award, and that 2 1/2 years was not unreasonable for the disciplinary inquiry to be concluded, nevertheless the 2nd Respondent has no excuse for not framing charges in 1982. This would have eliminated 10 years delay. The Petitioner's livelihood has been affected during this period. In addition, he would have undergone much mental anguish and anxiety. I consider it just and equitable to assess and award compensation in a sum of Rs. 100,000.

In regard to costs, the Supreme Court (Assigned Counsel) Rules, 1991, authorise the Court to order payment of a sum of Rs. 1,000 as costs to an Attorney-at-law assigned by the Court in a fundamental rights application. It is not necessary to do so in this case, as this is eminently one in which the Petitioner's costs should be paid by the 2nd Respondent. I direct the 2nd respondent to pay the Petitioner a sum of Rs. 2,500 as Counsel's fees and Rs. 2,500 for other expenses.

I grant the Petitioner a declaration that his fundamental right under Article 12(1) has been infringed by the 2nd Respondent, and direct the 2nd Respondent to pay the Petitioner a sum of Rs. 100,000 as compensation and Rs. 5,000 as costs.

PERERA, J. – I agree.

WIJETUNGA, J. – I agree.

Relief granted.