

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

In the matter of an application for a  
mandate in the nature of Writs of Certiorari  
in terms of Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.

C.A. Writ Application No. 103/2007

Pathmanathan Jeganathan,  
No. 69/2, Selvanayagam Road,  
Periya Urani,  
Batticaloa.

Petitioner

Vs

01. Mr. Kumarasiri Gamage,  
Senior Deputy Inspector General  
of Police, Commandant/ Sri-  
Lanka Police Reserve,  
Sri- Lanka Police Reserve  
Headquarters,  
101/1, Kew Road,  
Colombo 02.  
And 15 others

Respondents

BEFORE : S. SRISKANDARAJAH, J.

COUNSEL : S.N.Vijithsingh  
for the Petitioner  
Vikum de Abrew SSC  
for the Respondent

Argued on : 30.08.2010

Written submission on : 12.10.2010 (Petitioner)  
09.02.2011 (Respondent)

Decided on : 14.03.2011

### S.Srискандарajah J

The Petitioner joined the police service as a Reserve Police Constable on 12<sup>th</sup> August 1989. He was promoted to the rank of sergeant with effect from 01.09.1997. The Petitioner submitted that the majority of his service period was in operational areas of the North and East of the country. From 22<sup>nd</sup> May 2002 the Petitioner was functioning as the case -prosecuting officer of crime branch Batticaloa. On 23<sup>rd</sup> March 2004 when the Petitioner was making arrangement to get ready for the cases listed for that day, the 5<sup>th</sup> Respondent the Assistant Superintendent of Police for Batticaloa abused the Petitioner for not reported for the peak hour duty. As the Petitioner was degraded before the other police officers he made a complaint to the Inspector General of Police and the Chairman National Police Commission on 30<sup>th</sup> March 2004. On this complaint an inquiry was held by the National Police Commission but he was not informed of the out come of the said inquiry.

The Petitioner left for Colombo on 2<sup>nd</sup> April 2005 after obtaining one day off from the 4<sup>th</sup> Respondent the Headquarters Inspector Baticaloa to obtain medical treatment in Colombo. The Petitioner submitted that a police message dated 31<sup>st</sup> March 2005 stating that he was transferred to Police Division Matara with immediate effect was handed over to his mother on 3<sup>rd</sup> April 2005. The Petitioner submitted that as he was undergoing treatment he forwarded medical certificates to

cover his absence to the 4<sup>th</sup> Respondent the HQI of Batticaloa. He submitted that he did not have copies of all the Medical Certificates dispatched to the 4<sup>th</sup> Respondent. The HQI Batticaloa the 4<sup>th</sup> Respondent in his objections has stated that the Petitioner has not obtained one day off on the 1<sup>st</sup> April 2005 and that he did not receive any medical certificate from the Petitioner after the 15<sup>th</sup> of April 2005 and in any event the medical certificates should have been sent to the SSP Matara as he was transferred to Matara.

The Petitioner was served with a vacation of post notice dated 13<sup>th</sup> of June 2005 (marked P14) and the Petitioner by his letter dated 3<sup>rd</sup> July 2005 requested the 7<sup>th</sup> Respondent the Senior Superintendent of Police Matara to cancel the said vacation of post notice. The Respondents submitted that after considering his application to cancel the vacation of post notice the Respondents have rejected the application by letter dated 29<sup>th</sup> December 2006 (P22) . The Respondents further submitted that the 8<sup>th</sup> Respondent Inspector General of Police (IGP) without the knowledge of the vacation of post notice made order transferring the Petitioner to the Personal Security Division of Hon M.P. Ariyanethran, hence the said order has no validity.

The Petitioner's challenge to the vacation of post notice and the rejection of the application to cancel the said vacation of post notice by way of writ of certiorari is on the ground that the vacation of post notice and the order of transfer of the Inspector General of Police transferring the Petitioner to the personal unit of Hon. Ariyanethran MP is on the same date. The Petitioner contended that if the Inspector General of Police had made the order prior to the issue of the vacation of post notice by S.S.P.(Matara) then the SSP would not had any power to issue the said vacation of post notice as he has lost the power over the Petitioner. If both decisions had been made at the same time , then the IGP's order prevails over the order of the SSP. If the decision of the IGP was made after the decision of the SSP, the IGP had overruled the said decision of the SSP.

The question is whether the Petitioner was in service when the said order of transfer by the IGP was made? The Petitioner did not report for work after he was transferred to Matara Police Division on 31<sup>st</sup> March 2005. The Petitioner admits that he was aware that he was transferred to Matara Police Division, but he claims that he was receiving medical treatment and that is why he could not report for work. He also said that he forwarded medical certificate to HQI Batticaloa. The HQI Batticaloa denied that the medical certificates were forwarded to him. In this background the Petitioner states that he did not have copies of the medical certificates to support his contention that he was receiving medical treatment. On the other hand the Petitioner has not informed the Matara Police Division his inability to report for work. Hence the Petitioner has vacated his post from the 1<sup>st</sup> of April 2005 as he has not given any reason to the Matara Police Division for the failure to report on that day or thereafter. In these circumstances a subsequent transfer order by the IGP will not have any validity unless the said vacation of post is adequately explained and accepted by the authorities. The SSP Matara informed the Petitioner by his letter dated 13.06.2005 that the Petitioner has vacated post it is not an order but it is only an intimation that he has vacated post. The burden is on the Petitioner to give plausible reason why he did not comply with the transfer order and report for work on the 1<sup>st</sup> of April 2005 or on a subsequent day. As he has not given valid reasons, his application to cancel the said vacation of post notice was rejected by the authorities. The Petitioner has failed to submit documents or reasons to this court to show that he had valid reasons for not reporting for work but the authorities had failed to consider the same.

The Petitioner has failed to establish the ground on which a writ of certiorari could be issued hence this court dismisses this application without costs.

Judge of the Court of Appeal