

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

In the matter of an application Writ of  
Certiorari and Mandamus in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

**C.A. (Writ) Application**

**No. 356/2015**

Rajapakse Mudiyanse Lage Tilak Rajapakse  
Gajaba Mawatha,  
Samanpura,  
Dambulla Road,  
Kurunegala. **Petitioner**

Vs.

1. Road Development Authority,  
No. 216,  
Dezil Kobbakaduwa Mawatha,  
Battaramulla.
2. Mr. N.R Suriyarachchi,  
Chairman,  
Road Development Authority,  
No. 216,  
Dezil Koibbakaduwa Mawatha,

**Respondents.**

**C.A. Writ Appln. No. 356/2015**

**Before** : **Vijith K. Malalgoda, P.C., J (P/CA) &  
S. Thurairajah, P.C., J.**

**Counsel** : Harith de Mel for the Petitioner.  
Vicum de Abrew, SDSG, for the A.G.

**Written Submissions**

**of both parties filed**

**on** : 29.03.2017.

**Judgment delivered**

**On** : 06.04.2017.

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**S. Thurairaja, P.C. J.**

The Petitioner filed this petition on the 14.09.2015 and seeking the following substantial relief.

(d) Grant mandates in the order of Certiorari quashing the Administrative Circular dated 16<sup>th</sup> July 2015 marked "P12".

(e) Grant mandate in the order of mandamus mandating the 1<sup>st</sup> to 17<sup>th</sup> Respondents to call for Applications and conduct interviews to fill the vacancy of the Post of Chief Engineer Kurunegala.

The Petitioner submits that he joined the 1<sup>st</sup> Respondent RDA in 1996 and presently employed as a Senior Engineer in the construction division and attached as Resident Engineer at Kurunegala.

There was an administration circular calling for application for the Position of Chief Engineer (Kurunegala). Applications were invited from the Engineers in Road Development Authority with the qualification of Chief/ Senior Engineer who are in grade 2-1 or grade 1 in the R.D.A. The said circular No. R.D.A. /A/5 DDA/IR/GGN was dated 02.07.2015 and signed by the Director General of RDA, who is the 3<sup>rd</sup> Respondent. The said circular is marked as P10 and submitted with the petition.

The Petitioner claims that he was qualified to apply for the post, and he submitted his application on the 14<sup>th</sup> July 2015.

The 3<sup>rd</sup> Respondent by issuing an administration circular No. 2015/CL/37(I) dated 16.07.2015, cancelled the previous calling for application for the post of Chief Engineer, Kurunegala. The said circular is marked as P12 and submitted with the petition.

The Petitioner submits that on the date of cancellation the 18<sup>th</sup> Respondent was transferred to Kurunegala on a annual transfer.

For the purposes of completeness, I consider the submissions made by the Petitioner, when the position of Chief Engineer, Gampaha fell vacant on the 16.07.2015 it was also advertised in a similar way, six suitable candidates, including the petitioner applied for the said position. According to R1 submitted by the Respondent. The petitioner was placed on the 3<sup>rd</sup> position. The Petitioner has no complaint against that process and accept the decision made by the interview panel.

The complaint of the Petitioner is that there is no transparency in the appointment of the position of the Chief Engineer, Kurunegala. According to the annual transfer scheme which was in operation from the 01.01.2015 by circular No. 2014/CL/45 and reference No. RDA/A/02/AO/annual dated 20.08.2014 signed by the Director General of RDA. The scheme of transfer is very well settled in the said circular.

The Petitioner submits that the incumbent of the Kurunegala Station the 18<sup>th</sup> Respondent was stationed at another popular station i.e. Gampaha. According to the circular he should work at the station for more than five years. The 18<sup>th</sup> Respondent in this case had worked less than five years.

Respondents virtually admits the procedure P10, P12 namely calling for application and cancellation and submits that the transfer was due to exigency of service other than this explanation the Respondent had not submitted, why they did not follow administrative circular regarding the annual transfer. It is also noted that the 18<sup>th</sup> Respondent was transferred from a popular station to another popular station namely Gampaha to Kurunegala.

The Respondents had failed to provide any reasonable explanation for deviating from the standard procedures to fill the vacant position at Kurunegala.

It is also pointed out by the Petitioner that the 18<sup>th</sup> Respondent who had been named, did not submit any explanation or warranted

circumstances for him to be appointed as a Chief Engineer to Kurunegala.

The Respondents mainly takes up the defence of laches the Petitioner. Now I deal with the said objections taken up by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. It is submitted that the administrative circular marked **P10**, was dated on **02.07.2015** and the said circular was cancelled on **16.07.2015** and it is marked as **P12**. The petition was filed on the 14.09.2015 therefore the Petitioner is guilty of laches. I peruse materials before us and find that the Petitioner had submitted his application for post of Chief Engineer, Kurunegala on 14.07.2015.

After the said cancellation circular **P12** was issued the Petitioner raised his concern with the Project Directors and the Director General 3<sup>rd</sup> Respondent by letter dated 25.07.2015, 21.08.2015 and 01.09.2015. It also observed that the Road Development Engineers Association (RDEA) also raised their concern on this issue by letter dated 24.08.2015. There was no reply from the Respondents. The 3<sup>rd</sup> Respondent by letter dated 02.09.2015 (P22) replied to the President of

RDEA that this transfer is a pure administrative decision on the exigency of the service.

In the absence of any explanation as to why the Petitioner could not come before court in time is considered as delay in a review application. (*Samaraweera v Ministry of Public Administration* 2003 3 SLR 64 *Dahanayake v Sri Lanka Insurance Co* 2005 1 SLR 67.

In the case of *Seneviratne v. Tissa Dias Bandaranayake and another* 1992 2SLR 341 Amerasinghe, J adverting to the question of long delay, commented that-

*“If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”*

In the case of *Jayaweera vs. Assistant Commissioner of Agrarian Service* (1996) 2 SLR 70 at 73 the Court of Appeal held:

*“Petitioner seeking a prerogative writ is not entitled to relief as a matter of course or as a matter of right or as a routine. Even if he is entitled to relief still court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submissions to jurisdiction are all valid impediments which stand against the grant of relief.”*

The above decisions clearly explain what is a delay and when the Petitioner be punished of laches. In this case it is clear that the Petitioner had raised his voice with the management but it is the Respondent who ignored and pushed the Petitioner to seek the relief from the Court.

Considering all circumstances in this case I do not find the Petitioner is guilty of laches.

It will be preferable to visit all facts briefly for the purpose of coming to a reasonable conclusion. There was an advertisement calling for application for the post of Chief Engineer (Kurunegala). This circular bears a No -2015/CL/37 dated 02.07.2015 (P10). The requirement for the above position was Chief Senior Engineer who are



in grade 2 -1 or grade 1 in the R.D.A. The said circular was cancelled by administration circular No. 2015/CL/37(I). This circular was dated 16.07.2015 was marked as P12. In this circular it was stated calling for application for the post of Chief Engineer. (Kurunegala) is hereby cancelled.

It is revealed that the Chief Engineer of Gampaha (18<sup>th</sup> Respondent) was transferred to Kurunegala. It is further revealed that the said transfer was on the basis of annual transfer.

It was submitted that the vacancy arouse at Gampaha was advertised, an interview was held and a suitable candidate was selected (R1).

The Petitioner who is qualified to apply for the post of Chief Engineer (Kurunegala), submitted his application on the 14<sup>th</sup> of July 2015. When the advertisement was cancelled the Petitioner raised his concern with the Respondent, and there was no reply from respondents. At this juncture the President of Road Development Engineers Association (RDEA) made representation to the Director General and received response saying that **"In respect of Gampaha and**

**Kurunegala transfers are pure administrative decision on exigency of service.”**

The Respondents in their statement of objection submitted when the post of Chief Engineer Kurunegala became vacant, the Chief Engineer of Gampaha requested a transfer to Kurunegala. Considering his request the 1<sup>st</sup> respondent decided to transfer him to Kurunegala. The Respondents in their written submissions took a completely different stance and states that the transfers are pure administrative decision on exigency of service.

The Petitioner submits that the transfers are based on the circular marked (P17) which sets out the policy guidelines, procedures to be followed in annual transfers. Among many things there are classification of popular and non-popular stations. The Kurunegala and Gampaha both are listed under popular station category. As per 3.1 of the said circular an employee who is in service in a popular station for a minimum of 5 years or 3 years in a non-popular station is qualified for annual transfer.

The Petitioner submits the 18<sup>th</sup> Respondent had assumed office as Chief Engineer, Gampaha on the 10.10.2012 as of July 2015 he had not even completed 3 years at a popular station. This submissions was never rejected or contrarily explained by any respondents.

The Petitioner brings to the notice of the Court that there are direct allegation submitted against the 18<sup>th</sup> Respondent, but he had not filed any objection, up to now. The petitioner submits neither the 18<sup>th</sup> Respondent nor other respondents had not explained or submitted any documents regarding the request of the 18<sup>th</sup> Respondent to the 1<sup>st</sup> Respondent of the transfer or any other details of this posting.

The Petitioner makes a direct allegation of cancellation of P10 by P12 is arbitrary, contrary to legitimate expectation, unreasonable, contrary to procedural expectation by the respondents. The Respondents had not denied nor submitted the explanation for their act. In the statement of objections it was stated that the transfer was made on request. But in the written submission the respondents submitted that the transfer was due to exigency of service.

The Petitioner categorically submits he is not seeking that he be appointed as Chief Engineer Kurunegala, but he prays that the proper and due process be always followed which is legitimate, reasonable and just.

#### **A1**

In Wickremaratne and Jayaratne and others (2001) 3SLLR 161. Justice Gunawardhana says “The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or officials to act in compliance with its public undertakings and assurances.”

“Public officers or the State although are at liberty to alter the policy. Yet by no means are free to ignore legitimate expectations engendered by there actions and /or conduct.”

In Tokyo cement company (Lanka) Ltd Vs Director General of Customs and 4 others. 2005 (BLR) 24 The Supreme Court observed as follows:

A legitimate expectation has to be taken in the sense of an expectation which will be protected by law. In the case of Regina Vs Secretary of State for Education and Employment, Ex Parte Begnie W.L.R. 2000 Vol. I page 115, the Court of Appeal of England held that the “Court would not give effect to a ‘legitimate expectation’ if it would require a public authority to act contrary to the terms of the Statute.”

Considering all submissions before us, it is clear that the 18<sup>th</sup> respondent was transferred from a popular station to another popular station without following accepted procedures and standard rules. Respondents by merely submitting, pure administration decision on exigency service will not and should not cover the improper act. The Court will not accept cover up stories for breach of standard practices and legitimate expectation.

After careful consideration the Court finds the issuance of cancellation of calling for applications and interview dated 16.07.2015 is arbitrary and contrary to the standard rules therefore the Court issues the Writ

of Certiorari and quash the administrative circular above mention marked **P12**.

Further the Court issue a Writ of Mandamus on the 1<sup>st</sup> to the 17<sup>th</sup> Respondents to call for application and conduct interviews to fill the vacancy for the Post of Chief Engineer of Kurunegala forthwith.

Considering the nature of application this Court orders 1<sup>st</sup> to the 17<sup>th</sup> Respondents to pay cost to the Petitioner.

Application allowed with costs.

JUDGE OF THE COURT OF APPEAL

**Vijith K. Malalgoda, P.C., J (P/CA)**

I agree.

PRESIDENT OF THE COURT OF APPEAL

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