

**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 a Writ of *Certiorari* and
Mandamus under and in terms of Article 140
of the Constitution of Sri Lanka.

Jayasekara Withanage Samantha Udaya
Prabhath,
Gasthunagaha Koratuwa,
Midigama,
Ahangama.

Petitioner

CA (Writ) Application No: 143/2016 Vs.

1. R.A.T.D.N. Thennakoon,
Director Institutions,
Department of Agriculture,
Peradeniya.
2. R.H.U. Gunawardana,
Deputy Director of Agriculture,
Office of the Deputy Director of Agriculture,
Magama Ruhunupura,
Administrative Complex,
Hambantota.
3. Dr. R.R.A. Wijekoon,
Director General of Agriculture,
Department of Agriculture,
Peradeniya.

4. Damayanthi Konara,
Administrative Officer,
Department of Agriculture,
Peradeniya.
5. Hon. Attorney General,
Attorney General's Department,
Hulftsdrop,
Colombo 12.

Respondents

Before : A.L. Shiran Gooneratne J.

Counsel : Lakshan Dias for the Petitioner.

Zuhri Zain, SSC for the Respondents.

Argued on : 29/11/2017

Judgement on : 22/02/2018

A.L. Shiran Gooneratne J.

Parties have agreed that the Judgement will be delivered by Hon. A.L. Shiran Gooneratne.

By Petition dated 31/5/2016, the Petitioner has sought, inter alia, for an order of Writ of Certiorari to quash the letter of transfer sent by the 4th Respondent

(Administrative Officer, Department of Agriculture, Peradeniya) dated 13/1/2016, marked P11, and for an order in the nature of Writ of Mandamus on the 4th Respondent to re-instate the Petitioner, to the office of the, Deputy Director of Agriculture, Hambantota.

In the performance appraisal for the period 2014- 2015, marked P4, it was found that, the Petitioners inter-personal relations were weak and unsatisfactory. The Petitioner has appealed against the said findings stating that the reasons for such appraisal was due to personnel prejudice against the Petitioner and irregularities within the Department of Agriculture. An inquiry into the Petitioners appeal was conducted by a Board of Inquiry appointed by the Director of the Department of Agriculture. At the conclusion of the said inquiry, the Board of Inquiry recommended that, the Petitioner be transferred to the Service Training Institute of Angunakolapallassa. The formal approval of the said transfer was made by the 3rd Respondent (Director General of Agriculture) by letter dated 13/1/2016, marked "R6".

The Respondents state, that due to the Petitioners failure to act as directed by the said order, the payment of salary of the Petitioner was stopped temporarily, until the Petitioner assumed duties at the transferred place of employment. The decision taken to temporary suspend the salary was informed to the Petitioner by letter dated 05/03/2016, marked P14. However, the said suspension of the salary was withdrawn when the Petitioner reported for duty at the new service center,

where he was transferred and has continued his service at the, said service centre. On or about 3/3/2017, the Petitioner was accused of an attempted assault of an Agriculture Monitory Officer attached to the Department of Agriculture. This is confirmed by letter dated 25/5/2017, by the Officer in Charge of the Angunakollapallassa Police Station marked P7. Due to the said compliant the Petitioner was re-transferred to the Head Office of the Department of Agriculture to meet the required disciplinary procedure in terms of the Public Service Commission Procedure Rules. Therefore it is submitted that the transfer letter by the 4th Respondent dated 13/01/16, marked P11 is no longer in operation. The above change in circumstances, relevant to this application was within the knowledge of the Petitioner.

The 1st paragraph of document marked P9, tended by the Petitioner with the Counter Objections reads as follows,

“කෘෂිකර්ම අධ්‍යක්ෂ ජනරාල්ගේ අංක - පා/3/3/12-2017 හා 2017.04.20 දිනැති ලිපිය අනුව ඔබ වහාම ක්‍රියාත්මක වන පරිදි ප්‍රධාන කාර්යාලය වෙත ඔබ තාවකාලිකව අනුයුක්ත කර ඇත.”

It is observed that, the Petitioner as directed by letter dated 13/1/2016, marked “R6”, assumed duties at the Service Training Institute at Angunakollapallassa. However due to disciplinary reasons and as required by clause 195 (4) of the Public Service Commission Procedural Rules, the Petitioner was re-transferred to the Head Office of the Department of Agriculture. The

Petitioner has conceded to the said change in circumstances. Therefore, I am of the view that quashing transfer letter marked P11, and to re-instate the Petitioner as prayed for, is futile.

In the circumstances, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL