

**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 and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Risni Ranulya Iduwaree Thennahewa,
No: 65/9, 1/2A,
Near the Signal Post,
Bogahawaththe,
Ambalangoda.
(Minor)
2. Sandya Chamari Vithana,
No: 65/9, 1/2A,
Near the Signal Post,
Bogahawaththe,
Ambalangoda.

Petitioners

Court of Appeal case

No. CA 136/2016 (Writ)

Vs.

1. Sumith Parakramawansa,
Principal, Dharmashoka College,
Ambalangoda,
Chairman,
Interview & Admissions Board.
2. K.S.W.J. de Silva,
Secretary,
Interview & Admissions Board.

3. K.K. Kema Chandani,
Head of the Primary Section Member,
Interview & Admissions Board.
4. N.H. Rohana Kumara de Silva,
Representative Past Pupils Association
Member,
Interview & Admissions Board.
5. Jimsan Manawadu,
Representative,
Schools Development Society Member,
Interview & Admissions Board.

Members of the Interview Board in relation to admission of students to Grade 1 of Dharmashoka College, Ambalangoda for the year 2016.

Dharmashoka College,
Ambalangoda.

6. E.M.S. Ekanayake,
Principal, Richmond College,
Galle,
Appeals and Objections Board.
7. D.M.S. Nirosh Kumara,
Teacher,
Dharmashoka College,
Ambalangoda,
Member,
Appeals and Objections Board.
8. Sumith Petthawadu,
Representative Past Pupils Association

- Member,
Appeals and Objections Board.
9. D. Saman Dharshana de Silva,
Representative,
School Development Society,
Member,
Appeals and Objections Board.

Members of the Appeals and Objections Board in relation to admission to students to Grade 1 of Dharmashoka College, Ambalangoda for the year 2016.

Dharmashoka College,
Ambalangoda.

10. M.V. Heellage,
No. 65/8/A, Bogahawatte,
Ambalangoda.
11. A.H.S.R.T. de Silva,
No. 14A, School Lane,
Ambalangoda.
12. M.G. Methnada,
No. 3/1,
Kaluwadumulla,
Ambalangoda.
13. I.U. Heellage,
No. 65/8/A, Bogahawatte,
Ambalangoda.
14. A.H.N.P. de Pulle,
No. 14A,
School Lane,
Ambalangoda.

15. M.D. Roshan,
No. 3/1,
Kaluwadumulla,
Ambalangoda.
16. Secretary,
Unit to admit students to Grade 1
Ministry of Education,
Isurupaya,
Battaramulla.
17. Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.
18. Director,
National Schools,
Ministry of Education,
Isurupaya,
Battaramulla.
19. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : A.L. Shiran Gooneratne J.

Counsel : Vishwa de Livera Tennakoon with Lilani Ganegama instructed by
Maheshika Patabendi for the Petitioner.

Vikum De Abrew, DSG for the Respondents.

Argued on : 23/10/2017

Written Submissions on : 12/02/2018 by the Respondents.

Judgment on : 24/05/2018

A.L. Shiran Gooneratne J.

Sandya Chamari Vithana, the 2nd Petitioner, states that her daughter, Risini Ranulya Iduwaree Thennahewa, (1st Petitioner) was unlawfully, unreasonably and in contravention to circular marked P4, was prevented admission to Grade 1 of Dharmashoka College Ambalangoda (herein after sometimes referred to as the “said college”) by the 1st to 9th and 16th to 19th Respondents, who were members of the Interview Board and the Appeals and Objections Inquiry Board for admission to Grade 1 of the said college. The 2nd Petitioner further state that in the said process, the 10th, 11th and 12th Respondents, (applicants) who were not qualified, were admitted to Grade 1 in an arbitrary and capricious manner and therefore the said Respondents failed to exercise powers vested by virtue of clause 6.5 of the circular to the Appeals and Objections Board marked P4, and accordingly, the Petitioners are seeking, inter alia, a mandate in the nature of writ of Certiorari and a writ of Mandamus to quash the decision refusing admission and to grant the 1st Petitioner admission to Grade 1 of the said college. The Petitioners have also prayed for writ of Certiorari to quash the decision by the said Respondents to admit the 10th, 11th and 12th Respondents to Grade 1 of the said college.

At the conclusion of the oral submissions, respective parties undertook to file written submissions in the registry by 02/02/2018. However, the Petitioners have failed to submit their written submissions as per the said undertaking.

The 2nd Petitioner submits that, consequent to an application submitted under the transfer category for Grade 1 admission to the said college, marked P6, the 1st Petitioner was called for an interview by letter dated 17/9/2015, marked P7. The Petitioners do not dispute the evaluation of the said application by the respective Respondents. However, the Petitioners have submitted specific objections for Admitting Applicant No. TR 22, I. U. Heellage (represented by the 10th Respondent) Applicant No. TR. 09 A.H.N.P. De Silva, (represented by the 11th Respondent) and applicant No. TR 46, M.D. Roshan (represented by the 12th Respondent), in the list of admissions to Grade 1. The 2nd Petitioner contends that due to improper and fraudulent considerations adopted to admit the said applicants, the 1st Petitioner was deprived of admission to the said college and therefore, challenge the Interview Board for the said irregularities.

The Petitioners object to the admission of applicant No. TR 22, (10th Respondent) on the following grounds;

- (a) The application cannot be considered under the Transfer category as the transfer was a special appeal transfer which was effected on a request and not a transfer required by the State.

(b) Since the 10th Respondent was transferred to Elpitiya Base Hospital, with effect from 1/1/2016, there was no attachment to Balapitiya Base Hospital at the relevant time.

Petitioners submit that the 10th Respondent was transferred from the Narahenpita Military Hospital to the Balapitiya Base Hospital on a request made by him by letter dated 15/7/2010, marked P12. The Petitioners also refer to P13, and state that the 10th Respondent misrepresented facts to the Interview Board by falsely claiming that on 1/1/2015, he was working at the Balapitiya Base Hospital, when in fact, he was transferred to Elpitiya Base Hospital and had assumed duties at the said hospital by 30/12/2014.

The Petitioners object to the admission of applicant No. TR 09, (11th Respondent) on the following ground;

“that the said applicant misled the Interview Board by producing a Grama Niladhri Certificate in proof of his residence in Matale, when in fact, his former place of employment was Negambo.”

The Petitioners object to the admission of applicant No. TR 46, (13th Respondent) stating that;

“the said Respondent misled the Interview Board to falsely believe that the said Respondent’s residence was closer to Dharmashoka College Ambalangoda than to Buddhattha Primary School Ambalangoda.”

In response, to the objection raised to applicant No. 22, the DSG submits that, there is no evidence that the 10th Respondent specifically requested to be transferred to the Balapitiya Base Hospital.

Document marked P12, makes it clear that transfers of “Grade” Medical Officers are given after due consideration to the special appeals, and carried out on the availability of the requested post at the Base Hospital. Further the “effective date of transfer is considered as the date on which the officer has reported for duty in the new station”. It is observed that the transfers are effected on special appeals against a general list of transfers, and therefore the transfer of the 10th Respondent cannot be considered purely on the basis of a request for transfer made by the said Respondent.

Accordingly, it is at the discretion of the relevant authorities to consider special appeals, taking into consideration the vacancies existing for the said post. The need to consider a request for a transfer would arise only on the availability of a vacancy in the relevant Base Hospital and its requirements to fill such vacancy. Accordingly, one cannot consider a request for transfer by a Medical Officer in isolation, but necessarily to be considered with the requirement of the relevant Base Hospital. Therefore a special appeal, has to be considered on the requirement of the Base Hospital before the relevant appointment is made.

It is observed that at the time of evaluating the application submitted by the 10th Respondent, the 1st Respondent by letter dated 28/12/2015, marked 1R7, has

called for observations from the Secretary, Ministry of Health, where it was confirmed by letter dated 6/3/2016, marked 1R8, that the transfer of the 10th Respondent was made on service exigency. Therefore it is clear that the 10th Respondent was transferred due to the requirement of the relevant Base Hospital.

According to document marked 1R1, the 10th Respondent was transferred as an anesthetist to the Balapitiya Base Hospital with effect from 1/2/2011, and thereafter was transferred to Elpitiya Base Hospital with effect from 1/1/2015. However as reflected in document marked 1R2, the 10th Respondent was working at the Balapitiya Base Hospital as at 19/6/2015.

It is submitted by the Respondents that the procedure in relation to the transfer of Medical Officers is at the date of discharge from the previous attachment as Medical Officer. The transfer from Balapitiya Base Hospital to Elpitiya Base Hospital was effective from 1/1/2015 (P13). However, the 10th Respondent was attached to Balapitiya Base Hospital as at 19/6/2015, as indicated by document marked 1R2. The last date to submit applications for Grade 1 of the said college was 10/7/2015. Therefore it is observed that as contained in document marked P12, the “effective date of transfer will be considered as the date on which the officer has reported for duty in the new station”.

Therefore the Petitioners contention that the 10th Respondent falsely misrepresented facts relating to his transfer to the Interview Board by stating that he assumed duties at the Balapitiya Base Hospital on or about the 30th December

2015, does not hold ground. It is also observed that, after due consideration of relevant facts, the Appeals Objections Board has evaluated marks given to the 10th Respondent (applicant) on priority of residence over applicant Gurusinghe (TR42) and applicant W.A. Lakmal (TR35).

The Petitioners objection to applicant A.H.N.P. De Silva (TR09), is on the basis that the said applicant fraudulently misrepresented facts to the Interview Board by stating that he resides in Matale, when in fact his former place of employment was Negambo. (paragraph 32 of the Petition) However, it is observed that in application No.TR 09 marked 1R11, there is no material to substantiate the claim that the said applicants former place of employment was Negambo. In terms of clause 5 (v) of letter dated 17/09/2015, marked P7, an application made under the transfer category is required to produce documents to the satisfaction of the Interview Board, regarding the applicants previous place of service.

The Petitioners objection is that the said applicant was not living in the area of his place of service. The Grama Sevaka Certificate marked 1R9, dated 25/09/2015, states that the applicant has lived in Matale in the given address, prior to 01/04/2015. The letter of transfer marked 1R10, shows that, the applicant has commenced work at the Coast Conservation and Coastal Resources Management Department office at Balapitiya-Karandeniya on 12/05/2014. Together with the application No TR 09, dated 20/06/2015, the applicant has also submitted, Lease

Agreement No. 3568, dated 21/02/2015, marked 1R12, as proof of residence as declared.

The Petitioners objection to the selection of applicant No. TR 46, is on the basis that, the said applicant has been given the maximum marks in the category of close proximity to the school, when Buddhadhthta Primary School is in closer proximity to the applicant's residence. In support, the Petitioners have submitted two maps marked P20 and P21, and has compared the distance between the said schools, in which Buddhadhthta Primary School, with a distance of 496.17m is in closer proximity to the residence of the applicant. However, on the Google map marked 1R15, the school in closer proximity to the residence of the said applicant is Dharmashoka College. Therefore, the said applicant has satisfied the criteria of residence and the appropriate marks had been given.

When the Petitioners raised the aforesaid objections, the 2nd Petitioner was called for an interview and was heard by the Appeals Objections Board. The 2nd Petitioner submits that, the evaluation of her application by the respective Inquiry Boards are not in dispute. However, the 2nd Petitioner complains that the said Boards of inquiry failed to correctly evaluate critical documentation before the selections were made and therefore the marks allocated to the respective applicants are erroneous.

As noted above, the Petitioners have not been denied of the opportunity of having their objections in the matter considered. The Petitioners have failed to

produce any material to substantiate their legal entitlement to meet the criteria for admission on the basis that incorrect information or fraudulently prepared documentation were considered in the process of evaluation of the said applications. The Petitioners have also failed to disclose any procedural irregularity in the process of selection of the challenged applicants. It is observed that the Respondents have produced to court the documents relied upon to counter the objections raised by the Petitioners, which the Petitioners were not privy to at the time of evaluation of their objections by the Appeal Objections Board.

After due consideration of the disclosed documents relied upon by the relevant Inquiry Board, I am of the view that the Petitioners application was sufficiently considered and a proper determination has been made according to circular marked P4, and I do not see any illegality or impropriety on the part of the said Board in deciding in favour of the 11th, 12th and 13th Respondents for admission to Grade 1 of the said College.

Therefore the Petitioners application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL