

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

1. **Kariyawasam Haputhanthige Upeka Nadeeshani,**
Addaragoda Watta, Narawala, Poddala,
Galle.

PETITIONER

CA No. CA/Writ/64/2019

v.

1. Padmasiri jayamanna,
Secretary,
Ministry of Education,
Isurupaya,
Baththaramulla.
- 1a.) M. Nihal Ranasinghe,
Secretary,
Ministry of Education,
Isurupaya,
Baththaramulla.
2. A. L. A. Ashoka Siriwardena,
Additional Secretary,
Isurupaya,

- Baththaramulla.
- 2a.) P. L. Padmakumara,
Additional Secretary, (Control)
Isurupaya,
Baththramulla.
3. P. N. Illapperuma,
Education Director,
(National School Transfer)
Isurupaya,
Baththaramulla.
- 3a. Kalani Weerasinghe,
Educational Director,
(National School Transfer)
Isurupaya,
Baththaramulla.
4. Nimal Dissanayaka,
Provincial Education Director,
Southern educational Department,
Galle.
5. Sapuarachchi Pathirana Chandrawathi,
Zonal Education Director,
Zonal Education Officer,
Galle.
- 5a.) Chichra Bamunusinghe,
Zonal Education Director,
Zonal Education Office,
Galle.
6. Sandya Irani Pathiranawasam,
Principal,
Southlands College,
Galle.
- 6a.) Sumedha Kariyawasam

Principal,
Southlands College,
Galle.

RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
Wickum A. Kaluarachchi J.

COUNSEL : Chanaka Kulatunga for the Petitioner.
Navodhi de Zoysa, SC for 1st – 5th
Respondents.

ARGUED ON : 02.03.2023

DECIDED ON : 22.06.2023

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner in her amended Petition *inter-alia* sought, a writ of *certiorari* quashing the decision of the 3rd Respondent dated 11th December 2018 ('P22'); a writ of *certiorari* quashing the decision made in the letter No.ED/05/72/02/04/537 dated 19th November 2018 ('R 5'); a writ of prohibition prohibiting the Petitioner from being transferred to any school based on the above letter.

The 1st to 5th Respondents filed their objections seeking dismissal of the Petition.

Factual background

The Petitioner is a government teacher attached to Southland Girls School, Galle. The petitioner followed a three-year course, the National Diploma in Teaching, Information and Communication Technology at the National Institute of Education, Sri Lanka ('P 1'). In addition, the Petitioner has

undergone the Desktop Publishing Course conducted by a Computer Training Institute ('P 2'). Petitioner has also obtained a Bachelor of Science in Business Administration (General Degree) from the University of Sri Jayawardhanapura ('P3').

The Petitioner was recruited to the Ministry of Education as a teacher of Information Technology (English Medium) and was posted to Hungama Vijayaba Central College by letter dated 25th June 2008 ('P 4').

Thereafter, the Petitioner was temporarily transferred to Meepawala Amarasuriya Central College, Galle, by letter dated 10th October 2008, at the request of the Petitioner ('P 5'). According to the Petitioner, the duty assigned to her at Meepawala Amarasuriya Central College was also teaching Information Technology¹. Thereafter, the Petitioner was again transferred to Southland Girls School, Galle, by letter dated 12th October 2009 ('P 6').

According to the Petitioner, her letter of appointment was subsequently amended by the letter dated 9th February 2018 ('P 7'), based on the new Service Minutes of the Sri Lanka Teaching Service. Thereafter, she was assigned additional duties by letter dated 23rd April 2018 ('P 8'). The Petitioner submitted documents 'P 9' to 'P 13', 'P 30', and 'P 31' in proof of her dedication towards her Information Technology students; training, and the appreciation she received. Her service evaluation sheets were also marked 'P19(a)' and 'P 19(b)'.

Subsequently, the Petitioner was transferred to Wanduramba National School, Galle, by the 3rd Respondent's letter dated 11th December 2018 ('P 22'), to teach Buddhism and Practical Training Skills. The petitioner states that she was never a teacher of Buddhism or Practical Training Skills. The Respondent disputed the fact that she was assigned the subjects of Buddhism and Practical Training Skills.

According to the Petitioner, transfers of teachers in her category are governed by Gazette No. 1589/30 dated 20th February 2009 ('P 20'), and the guidelines set out by the Secretary to the Ministry of Education in the letter No.ED/01/27/15/6/2019 dated 26th June 2018 ('P 21').

¹ At paragraph 14 of the amended Petition.

The Petitioner submitted that as per the above Gazette Notification, there are only four types of transfers applicable to any teacher, namely;

- (a) Annual transfers.
- (b) Transfers on exigencies of service.
- (c) Transfers on disciplinary grounds.
- (d) Mutual transfers upon request by the relevant officials.

The Petitioner submitted that;

- There was no preliminary inquiry or disciplinary inquiry held against the Petitioner at the time of the transfer.
- Petitioner has not completed ten years of service as per Circular marked 'P21'.
- Petitioner has not applied for a transfer.

The Petitioner alleged that although her transfer letter 'P 22' states that she is transferred on the recommendation made by the Secretary to the Ministry of Education by his letter No. ED/05/72/02/04/537 dated 19th November 2018, no such letter was made available to her despite her request made under the Right to Information Act (*Vide* 'P 24', 'P 25', 'R 1', and 'R 2'). The failure to make available a document referred to in the transfer order marked 'P 22' is a breach of the principles of natural justice and consequently amounts to an error on the face of the record². However, finally, the Respondents have tendered a copy of the aforesaid letter along with their objections marked as 'R 5'. The Petitioner has also annexed a copy of the same with her counter objections marked 'P 28'.

The Petitioner submitted that the 3rd Respondent's letter dated 11th December 2018 ('P 22') transferring her to Wanduramba National School and subsequent decisions in this regard are unlawful and/or unreasonable and/or irrational and/or *ultra-vires* and/or contrary to natural justice, lacking transparency, violating procedural and substantive legitimate expectation.

Accordingly, the Petitioner prayed for the aforementioned reliefs in the Petition.

² *Gunadasa v. Attorney General and another*; [1989] 2 SLR 130.

The 1st to 5th Respondents in their objections raised a preliminary objection on the maintainability of this application on the ground that the Petitioner's application has become futile. The Respondent's contention is that since no interim relief had been granted by this Court and as of now the Petitioner was transferred to Wanduramba National School and serving at the said school, quashing 'P 22' would be futile. This objection will be considered herein below in this judgment.

According to the Respondents, in addition to the Public Service Commission Rules published in the aforementioned Gazette No. 1589/30 dated 20th February 2009 ('P 20'), transfers of teachers of Sri Lanka are governed by National Transfer Policy set out in Circular No. 2007/20 issued by the Secretary to the Ministry of Education on the 13th December 2007 ('R 3').

The Respondent submitted that at a preliminary inquiry held against the then principal of Southland Girls School, Galle, it had been revealed that the Petitioner does not participate in any of the extra-curricular activities in the school and that she is having issues with the school administration ('R 4'). Further, it was submitted that the said preliminary inquiry report recommended the Petitioner be transferred to another school. Accordingly, the Additional Secretary to the Ministry of Education and Higher Education (Control), in his letter dated 19th November 2018, recommended the Director (Teachers Transfers) to transfer the Petitioner to a new school since the Petitioner has served at the Southland Girls School, Galle, nearly for ten years. Further, the Respondents stated that the statement in 'R 5' that the Petitioner had been teaching Buddhism and Practical Training Skills at Southland Girls School is inadvertent and was subsequently corrected by the letter dated 27th June 2022 marked 'R 7'. In proof of the fact that she has not been teaching Buddhism, the Respondents produced Petitioner's school timetables marked 'R 6(a)' to 'R 6(b)'.

Accordingly, the Respondents moved to dismiss the Petitioner's application.

Analysis

Firstly, I will address the Respondent's preliminary objection raised in the statement of objections that this application has become futile on the ground that the Petitioner has complied with the transfer order and has already served up to now at Wanduramba National School, Galle. It appears that if 'P 22' is

quashed and the Petitioner is reverted back to the Southland Girls School, Galle, it would contravene circular ‘P 21’ which stipulates that teachers who have completed ten years at a National School are subject to compulsory transfer. Nevertheless, as it was correctly submitted by the learned Counsel for the Petitioner it is the duty of the Petitioner to first comply with the impugned order and then complain. This principle had been acknowledged by Courts in the case of *Sri Lanka Insurance Corporation Limited v. Jathika Sevaka Sangamaya*³. If the petitioner did not comply with the transfer order, she would be subject to disciplinary proceedings for non-compliance. Moreover, even, if it is assumed that the Petitioner’s application has become futile, futility alone is not a ground to deny relief. In the case of *Mohan Lal v. Seneviratne*⁴ His Lordship Samayawardhena J., sitting in Court of Appeal (as His Lordship then was) observed that even in an application where relief had been granted whilst it is pending, the Court could make a finding and award costs of the action at least to send a message to the other public officers not to be swayed by extraneous factors in discharging their professional duties. In the case of *Sudarkaran v. Bharathi*⁵, the Supreme Court set aside the judgment of the Court of Appeal, quashed the decision of the Respondents, and ordered a rehearing, although the renewal of the license for the year in question had expired.

Accordingly, I am of the view that this application is not futile on the ground stated by the Respondents. Nevertheless, the Petitioner’s right to maintain this application will be considered herein below.

Next, I will address the jurisdictional objection raised by the learned State Counsel for the Respondents based on Article 61A of the Constitution. Although this had not been taken up in the statement of objections filed by the Respondents, since it is a question of law, this Court is inclined to consider the same.

Article 61A reads as follows;

‘61A. *Subject to the provisions of Article 59 and of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon*

³ [2011] 2 SLR 114.

⁴ CA Writ/ 243/2015.

⁵ [1989] 1 SLR 46.

or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.’

Article 57 (1) of the Constitution provides for the delegation of powers of the Public Service Commission relating to the appointment, promotion, transfer, disciplinary control, and dismissal of public officers, as specified by the Commission. The delegation of such powers must be published in the Gazette. Accordingly, the Public Service Commission has delegated the aforementioned powers to the respective heads of the department by Extra Ordinary Gazette No. 1989/29 dated 19th October 2016⁶. Secondary and tertiary level officers as defined in Public Administration Circular No. 06/2006, not belonging to the combined services, under the subject of education in the Ministry of the Minister in charge of the subject of Education are delegated to the Secretary to the Ministry of the Minister in charge of the subject of Education or to an Additional Secretary nominated by the Secretary and approved by the Public Service Commission⁷.

According to Article 61A, this Court has no power or jurisdiction to inquire into, any order or decision made by the Commission as well as a decision made by a public officer on the delegated authority of the Commission. The remedy available under Article 61A is an application to the Supreme Court under Article 126 or an appeal to the Admirative Appeals Tribunal established in terms of Article 59 of the Constitution.

In the case of *Gamini Dayarathne v. Wickremarathna and others*⁸ His Lordship Arjuna Obeyesekere J., (P/CA) (as His Lordship then was) observed that ‘...while any public officer aggrieved by a decision of the Public Service Commission or a committee or public officer to whom the powers of the Public Service Commission have been delegated could challenge such decision, either by way of a fundamental rights application in terms of Article 126 of the Constitution, or by preferring an appeal to the Administrative Appeals

⁶ Clause 10. (Previous Gazette (Extra Ordinary) No. 1941/41 dated 20.11.2015 as amended by Gazette (Extra Ordinary) No. 1955/22 dated 25.02.2016 that delegated powers in terms of Article 57 (1) of the Constitution had been rescinded by this Gazette Notification).

⁷ Ibid Clause 08.

⁸ CA (Writ) Application No. 347/2018

Tribunal in terms of Article 59. Article 61A has shut out the writ jurisdiction of the Court of Appeal to review decisions of the Public Service Commission.’

In the case of *Ratnasiri and others v. Ellawala and others*⁹ Saleem Marsoof J., (P/CA) (as His Lordship then was) observed as follows;

‘... while the Public Service Commission is empowered to delegate to a Committee or a public officer its powers of appointment, promotion, transfer, disciplinary control and dismissal of specified categories of public officers, it is expressly provided that any public officer aggrieved by an order made by any such Committee or public officer may appeal first to the Public Service Commission and from there to the Administrative Appeals Tribunal which is appointed by the Judicial Service Commission. All this is in addition to the beneficial jurisdiction created by Article 126 of the Constitution which is expressly retained by Article 61A of the Constitution, these are the many pillars on which the edifice of the Public Service rests’

‘In view of the elaborate scheme put in place by the Seventeenth Amendment to the Constitution to resolve all matters relating to the public service, this Court would be extremely reluctant to exercise any supervisory jurisdiction in the sphere of the public service. I have no difficulty in agreeing with the submission made by the learned State Counsel that this Court has to apply the preclusive clause contained in Article 61A of the Constitution in such a manner as to ensure that the elaborate scheme formulated by the Seventeenth Amendment is given effect to the fullest extent.’

*Katugampola v. Commissioner General of Excise and others*¹⁰ Shiranee Tilakawardane J., (P/CA) (as her Ladyship then was) held that *‘the ouster clause contained in Article 61A of the Constitution precludes the jurisdiction of this Court and grants exclusive jurisdiction to the Supreme Court to hear and determine all such matters envisaged within the scope and ambit of such Article. In these circumstances, the person aggrieved by the decision would have to invoke the jurisdiction of the Supreme Court to inquire into the matter in terms of Article 126 of the Constitution as a violation of a fundamental right.’*

⁹ [2004] 2 SLR 180 at p.190

¹⁰ [2003] 3 SLR 207 at p. 190

The Additional Secretary (Control) acting on behalf of the Secretary of the Ministry of Education recommended the Petitioner to be transferred to another school from Southland Girls School, Galle, by his letter 'R 5' addressed to the (Director Teachers Transfers). Accordingly, the Director of Education (National Schools Teachers Transfers) acting on behalf of the Secretary of the Ministry of Education, under the direction given in the letter 'R 5' carried out the transfer of the Petitioner through his letter 'P 22'.

Conclusion

Accordingly, it is clear that the Petitioner's transfer is implemented upon the powers delegated by the Public Service Commission to the Secretary to the Ministry of Education under the aforementioned Gazette notifications.

Thus, I am of the view that the Petitioner is not entitled to challenge the decision made on the delegated powers of the Public Service Commission in this writ application.

In light of the above analysis, this Court refuse to issue the mandates in the nature of writs of *certiorari* prayed for in paragraphs (b), (c) and (d) of the prayer of the Petition.

Application dismissed.

Parties shall bear their own costs.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL