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.

C.A. (Writ) Application No. 385/2017

Neshakumaran Vimalaraja,
Somasundaram Street,
Kaluthawalai-4,
Kaluthawalai, Batticaloa.

PETITIONER

Vs.

1. Land Reforms Commission,
   475, Kaduwela Road, Battaramulla.

2. Sampath Subasinghe Arachchi,
   Chairman,
   Land Reform Commission,
   475, Kaduwela Road, Battaramulla.

3. Hon. Seeniththamby Yogeswaran
   Member of Parliament,
   Pudukuduirippu, Valachchenai.

4. Retired Wing. Cmdr. S.P.
   Maddumage,
   Director (Security and Investigation) /
   Inquiring Officer,
   Land Reform Commission,
   475, Kaduwela Road, Battaramulla.

5. K.U. Chandralal,
   Director-General,
   Land Reform Commission,
   475, Kaduwela Road, Battaramulla.

6. Dr. I.H.K. Mahanama,
   Secretary,
   Ministry of Lands and Parliamentary Reforms,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatta Avenue,
   Battaramulla.

7. S. Parameshwaran,
   Director,
   District Land Reform Authority,
   Kachchery, Ampara.

RESPONDENTS.

Before : L.T.B. Dehideniya J. (P/CA)
: Shiran Gooneratne J.

Counsel : Sanjeewa Jayawardane PC with M.V.Sirimanne instructed by G.G. Arulpragasam for the Petitioner.

Argued on : 24.11.2017

Decided on : 30.11.2017

L.T.B. Dehideniya J. (P/CA)

This is an application for mandate in the nature of writs of certiorari and prohibition. The Petitioner is a director of Land Reform Commission (LRC) attached to Batticaloa district. He states that he was actively engaged in recovering the possession of lands belonging to the LRC from the unlawful occupiers. As a result of his work in this field, he states that he was shot by unknown persons and was critically injured and was hospitalized in Batticaloa and Colombo for some time and had to undergo several surgeries.

Even after doing six surgeries, still his right hand is not fully functional. The Petitioner states that he has to undergo further surgeries and have to continue with the physiotherapy treatments.

The Petitioner further stated that he was transferred from Batticaloa to Colombo with effect from the 1st of December. Without any application made by the Petitioner, this transfer had been affected. He had made several appeals to the authorities and he has come to know that the 3rd Respondent, the Member of Parliament for the Batticaloa District had made a complaint to the Hon. Speaker of the Parliament and on that complaint the Speaker had informed the Hon, Minister to take necessary steps. No documentary proof is tendered to establish this fact and the Petitioner states that even after the request; he was not provided the documents.

The Petitioner admits that in a meeting with the 3rd Respondent unpleasant situation has arisen but after police intervention both parties have settled the matter. The Petitioner further states that the police have reported that there is no reason to precede any further.

The Petitioner's grievance is that the said transfer is arbitrary. The learned President's Counsel for the Petitioner submitted that Public service Commission had issued certain rules in relation to transfers and it has made it mandatory to give reasons for the transfer. In the present case, the Petitioner was not informed the reasons for the transfer and therefore the transfer is arbitrary. The learned Counsel further submits that the Superior Courts have emphasized the necessity to give the reasons for the transfer.

It has been held in the case of SLR - 1997 Vol.1, Page No – 16 TENNAKOON, ASSISTANT SUPERINTENDENT OF POLICE v. T P. F DE SILVA, INSPECTOR GENERAL OF POLICE AND OTHERS at page 32 onwards the Court had explained the necessity to give reasons for an administrative decision held that;

In another context, in Wickramabandu v Herath(3), a Bench of five Judges referred to the need to scrutinize the reasons for a detention order issued by the Secretary, Defence and held a detention to be unlawful.

As to the failure to give reasons for administrative decisions, Wade's observations - in the context of judicial review - apply with even greater force in our fundamental rights jurisdiction, especially the equal protection of the law:

". . . . there is a strong case to be made for the giving of reasons as an essential element of administrative justice . . . . Unless the citizen can discover the reason behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others .... Although there is no general rule of law requiring the giving of reasons, an administrative authority may be unable to show that it has acted lawfully unless it explains itself." (Administrative Law, 7th ed, pp 542-543)

Among the cases he cites is R. v. Civil Service Appeal Board, ex p. Cunningham(4), which was an application for judicial review of a decision assessing compensation for the unfair dismissal of a prison officer. It was held that:

". . . . the board should have given outline reasons sufficient to show that they were directing their mind and thereby indirectly showing not whether their decision was right or wrong, which is a matter solely for them, but whether their decision was lawful. Any other conclusion

would reduce the board to the status of a freewheeling palm tree .... The board's objection to giving reasons ... is that this would tend to militate against informality and would lead to an undesirable reliance upon a body of precedent. I find this totally unconvincing. The evidence shows that those who advise applicants and departments do so frequently and must be well aware of the board's previous decisions and of the circumstances in which they were made. There must therefore already be a body of precedent. If the board have no regard to their previous decisions, they must be acting inconsistently and be failing to do justice as between applicants. This I am loathe to believe . . . . fairness requires a tribunal such as the board to give sufficient reasons for its decision to enable the parties to know the issues to which it addressed its mind and that it acted lawfully." (pp 319-320)

I hold that to justify a transfer of a public officer on the ground of the lack of a satisfactory working relationship with another person, a wholly subjective opinion, or a mere assertion to that effect, is quite insufficient. First, it is not at all enough to show that there are disagreements or disputes or a mere lack of harmony between them: the problem must relate to their working relationship. An act done by one person which impinges on the official duties of a public officer may create such disharmony, but that does not mean that there is an unsatisfactory working relationship between them. A working relationship is that which exists between superior and subordinate, or colleague and colleague, in one workplace; or even between two persons in different departments, institutions or services, when the public interest requires that they work together. Nothing has been said in the pleadings or in the submissions to satisfy this Court that

any working relationship was required between the 3rd respondent and the petitioner. The only material placed before the Court - apart from vague allegations - is that the petitioner was investigating certain offences. If at all he was required to have a working relationship with any one in regard to those investigations, Chapter XI of the Code of Criminal Procedure Act suggests that it was with the Magistrate's Court. The 3rd respondent had, indeed, the right to complain about the petitioner to his superior, but that has nothing to do with working relationships.

Let me assume, however, that such a working relationship was required, in the public interest. A bare assertion that it was unsatisfactory is not enough. The Court must ascertain whether there were grounds for that opinion, and, if there were, it must examine those grounds; upon such an examination the Court is not entitled to substitute its own opinion, simply because it disagrees with the 1st respondent; and it can only intervene if that opinion is found to be arbitrary, capricious, unreasonable, or discriminatory (or otherwise violative of fundamental rights).

In the case of Jayaweera v. Prof. Dayasiri Fernando and others SC FR 484/2011 sc minutes dated 16.01.2017 it was held that;

"Transfers are fourfold as indicated below

(i) Transfers done annually;

(ii) Transfers done on exigencies of service;

(iii) Transfers done on disciplinary grounds;

(iv) Mutual Transfers on requests made by Officers."

It was not in dispute that the Petitioner was initially transferred by P10 to Gampaha Bandaranayake Vidyalaya and the next day to the

Ministry of Education by P11. None of the transfer orders convey any reasons to the Petitioner for such transfers as contemplated in Clauses 221 and 222 of the Procedural Rules. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the administrative body itself. Conveying reasons is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimize the chances of unconscious infiltration of bias or unfairness in the conclusion. The duty to adduce reasons will be regarded as fair and legitimate by a reasonable man and will discard irrelevant and extraneous considerations. Therefore, conveying reasons is one of the essentials of justice (Vide S. N. Mukherjee Vs. Union of India (1990) 4 S.CC.C. 594; A.I.R. 1990 S.C. 1984)

When leave to proceed was granted on 02.12.2011, this Court made the following observations :

> *"If the transfer is on "exigencies of service" or a "transfer on disciplinary grounds" in terms of Rules 221 and/or 222, the appointing authority is mandated to convey the reasons for such transfers in writing to the Officer concerned. The documents marked P10 and P11 do not give any reasons.*

In the present case there is no reason given for the transfer. The Petitioner had not completed the normal transferable period of four years, had not made any application for a transfer. The transfer order does not give any indication that it was done due to the exigencies of services too. The Petitioner states that he was called for a disciplinary inquiry by a telephone

call but was not served with a charge sheet or was not asked to show cause and given any order. Therefore the Court can consider that it is not a formal disciplinary inquiry but an informal fact finding discussion. Therefore, the transfer cannot be a one made on disciplinary grounds and there is no indication to the fact that the transfer was on the disciplinary grounds.

Under these circumstances, the Petitioner has established a prima facie case that the transfer is arbitrary.

Unless the Court issues an interim order, the application will be nugatory because the Petitioner has to assume duties in the new station from the 1st of December.

On the above reasons, I issue an interim order as prayed for in the paragraph (l) of the prayer of the petition for 14 days.

I order to issue notice to the Respondents.

President of the Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal