

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

**In the matter of an Application
made under and in terms of Article
17 and 126 of the constitution of
the Democratic Socialist Republic of
Sri Lanka.**

SC /FR 241/2016

Mr. Ponnaiya Sivagnanam
15/103, Gunananda Mawatha,
Colombo 13.

PETITIONER

-VS-

1. Hon K.C. Logeshwaran,
Governor, Western Province,
109, 5th Floor, Rotunda Tower,
Galle Road,
Colombo 03
2. Mr. Ranjith Somawansa,
Minister of Provincial Education,
Western Provincial Council,
4th Floor, 89, Kaduwela road
"Ranmagapaya"
Battaramulla.
3. Mr S.G. Wijebandu,
Secretary to the Ministry of
Education – Western Province,
4th Floor, 89, Kaduwela Road,
"Ranmagapaya"
Battaramulla.
4. D.D.P.W.Gunarathna,
Provincial Director of Education,

Provincial Department of
Education,
No 76,
Ananda Kumaraswami Mawatha,
Colombo 07.

4(a) Mr. P. Srielal Nonis,
Provincial Director of Education,
Provincial Department of
Education,
No 76,
Ananda Kumaraswami Mawatha,
Colombo 07.

5. Mr. W.M. Jayantha
Wickremanayaka,
Zonal Director of Education,
Zonal Education Office,
Vithanage MAwatha,
Colombo 02.

5(a) Mr. G.N. Silva
Zonal Director of Education,
Zonal Education Office,
Vithanage MAwatha,
Colombo 02.

6. Mr. H.M. Chandradasa,
Deputy Zonal Director of
Education,
Zonal Education Office
Vithanage MAwatha,
Colombo 02.

7. P. Sathyendra,
Principal,
Kotahena Methodist Tamil
Vidyalaya,

Colombo 13

8. Mariyam Shanthana A.C.
Principal,
Mahawatta St. Anthony's College,
Madampitiya,
Colombo 15.

9. Provincial Public Service
Commission - Western Province,
109, Main Street,
Battaramulla.
 - (a) Mr. K. Sarath Gunathilake,
Hon Chairman,
Provincial Public Service
Commission - Western
Province,
109, Main Street,
Battaramulla.

 - (b) Mr. A.W.C. Ariyadasa,
Member,
Provincial Public Service
Commission - Western
Province,
109, Main Street,
Battaramulla

 - (c) Mr. Sunil Fernando,
Provincial Public Service
Commission - Western
Province,
109, Main Street,
Battaramulla.

 - (d) Mr. S.K. Liyanage,

Provincial Public Service
Commission – Western
Province,
109, Main Street,
Battaramulla.

(e) Mr. K. Paramalingam,
Provincial Public Service
Commission – Western
Province,
109, Main Street,
Battaramulla.

(f) Mr. J. Paranamana,
Provincial Public Service
Commission – Western
Province,
109, Main Street,
Battaramulla.

10. Hon Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : **B. P. ALUWIHARE, PC, J.**
P. PADMAN SURASENA, J.
S. THURAIRAJA, PC, J.

COUNSEL : Rushdie Habeeb with Mrs. Shafeena Maharooft instructed by Mrs.
Thakshila Serasinghe for the Petitioner.
Rajiv Goonetillake, SSC for the Respondents.

ARGUED ON : 19th June 2019

WRITTEN SUBMISSIONS : Petitioner on the 1st of July 2019
Respondents on the 2nd Of July 2019

DECIDED ON

: 06th September 2019.

S. THURAIRAJA, PC, J.

The Petitioner i.e. Ponnaiya Sivagnanam, is an Arts Graduate and was appointed as a graduate teacher of the Sri Lanka Teachers Service and has been teaching at Methodist College since 2010, which is a school under the purview of the Western Province Educational Ministry. The Petitioner has filed this Application before us, alleging that his fundamental rights under Articles 11, 12(1), 12(2) and 14(1)(g) of the Constitution have been infringed by the Respondents and leave was granted on 19.10.2017 in terms of Article 12(1) of the Constitution.

The facts of the case, in the chronological order, have been produced as follows for completeness.

The Petitioner was first appointed as a graduate teacher in 1993 to Al Naser Maha Vidyalayam, Colombo 14. He was, later, transferred to the Mutwal Hindu College, Colombo 15, where he served from 1997 to 2004. Following this, he was transferred to St. Johnes College, Colombo 15, where he served from 2004 to 2010 June. The Petitioner has not disputed the aforementioned transfers.

In June 2010, the Petitioner was transferred to Kotahena Methodist Tamil Vidyalayam, Colombo 13. The Petitioner, during his early days at the school, wrote to various authorities about the alleged mismanagement and misappropriation of the school resources by the then Principal of Kotahena Methodist Tamil Vidyalayam (hereinafter referred to as the '7th Respondent'). On 12th May 2016, the Petitioner received a transfer letter to Mutwal Hindu College (hereinafter referred to as the 'First Transfer of Dispute'). The Petitioner made an appeal to the Zonal Director of Education (hereinafter referred to as the '5th Respondent'), protesting the said transfer and instead requested Kalaimagal Tamil Vidyalayam, Colombo 14, since there was an English teaching vacancy in the said school. Awaiting further notice from the 5th

Respondent, the Petitioner intended to continue at the Methodist College, but the 7th Respondent objected to the Petitioner signing in the Register and therefore, the Petitioner requested duty leave until the transfer was corrected.

On 31.05.2016, the Petitioner received a further transfer letter to Fathima Muslim Ladies College, Colombo 12 (hereinafter referred to as the 'Second Transfer of Dispute'). When the Petitioner reported at the said school, the Principal had refused from permitting the Petitioner to sign in the Register stating that as a long standing policy, the School has had only Lady Teachers. The Petitioner had informed the 5th Respondent of the same and had requested duty leave. Thereafter, on 06.06.2016, the Petitioner along with a Teachers' Union Representative had pleaded with the Zonal Director to cancel the transfer and in the alternative, the Petitioner had appealed for a school in Kotahena, where there was a vacancy for a teacher of English.

On 15.06.2016, the Petitioner received a transfer letter to St. Anthony's Tamil Vidyalayam, Madampitiya, Colombo 15 (hereinafter referred to as the 'Third Transfer of Dispute'), but when the Petitioner reported for duty, the Principal of St. Anthony's Tamil Vidyalayam (hereinafter referred to as the '8th Respondent') refused the Petitioner's presence there. The Petitioner complained to the Deputy Zonal Director of Education (hereinafter referred to as the '6th Respondent'), who gave him a letter dated 22.06.2016 (document marked as 'P12') addressing the 8th Respondent, seeking the 8th Respondent to inform the Zonal Director if he does not accept the transfer of the Petitioner. The directive was disregarded by the 8th Respondent.

On the same day, the Petitioner handed over a letter to the 6th Respondent, (document marked as 'P13') who then gave the Petitioner a letter addressing the 7th Respondent (document marked as 'P14'), seeking the 7th Respondent to permit the Petitioner to continue in Kotahena Methodist Tamil Vidyalayam, Colombo 13.

The Petitioner, along with the said letter marked 'P14' reported to Kotahena Methodist Tamil Vidyalayam on 23.06.2016, where the 7th Respondent over a phone call to the 6th Respondent, refused the Petitioner and sought other solutions.

On 11.07.2016, the Petitioner by letter, was directed to report to St. Anthony's Tamil Vidyalayam, again. When the Petitioner reported there, the 8th Respondent refused his reporting at the school.

Thereafter, the Petitioner has filed the present Application before this Court and leave was granted on 19.10.2017 in terms of Article 12(1) of the Constitution.

Having produced the facts of this Application as submitted by the learned Counsel for the Petitioners and agreed to by the learned Counsel for the Respondents, I now turn to consider the grievance of the Petitioners and the corresponding contentions of the Respondents.

Contentions of the parties on the First Transfer of Dispute

In paragraph 8 of the Petition dated 21.07.2016 (hereinafter referred to as the 'Petition'), the Petitioner contends that he had protested the first transfer since he had already served in Mutwal Hindu College between 1997-2004 and alleges that the transfer was contrary to the National Transfer Policy of Teachers Circular No. 2007/20 dated 13.12.2007.

In response to these averments, in the Affidavit of the 5th(a) Respondent dated 24.08.2018 (hereinafter referred to as the 'Affidavit of the Respondent'), it has been stated in paragraph 8, that the transfer was due to the need to balance the teachers available in the zone, as there was vacancy in Mutwal Hindu College and that the transfer had been done in accordance with paragraph 8:2 of the Education Ministry Circular 1/2016.

Contentions of the parties on the Second Transfer of Dispute

In paragraph 10 of the Affidavit of the Respondent, it has been stated that the Principal of Fathima Muslim Ladies College objected to the Petitioner being transferred there.

The Petitioner has contended in paragraph 10 of the Petition that he had objected to the transfer but had reported there for the purpose of continuing duty.

Contentions of the parties on the Third Transfer of Dispute

The Petitioner, in paragraph 16 of the Petition has, in terms of the third transfer, stated that, the treatment by the Principal is due to the influences of the 7th Respondent. Further, the Petitioner, in paragraphs 18 and 20, has *inter alia*, described the transfer procedure as indiscriminate, unlawful, unfair and illegal.

The Respondents, in paragraph 16 of the affidavit, have stated that the Petitioner by his conduct, had demonstrated that he is having difficulty in getting on with the Principals of schools. Moreover, it has been stated in paragraph 17 of the affidavit that, the transfers were all made within the Colombo North Division of the Zone and that other teachers were also transferred.

With regard to the above contentions of the parties, I make the following observations.

In order to constitute an infringement under Article 12(1), there must have been a discriminatory action or an arbitrary action that amounts to a denial of equal treatment or equal protection of the law.

In the case of ***Perera v. Jayawickrema (1985) 1 Sri L.R. 285***, it was observed that-

"Discrimination can exist only where two persons or two subjects are treated in different ways. It arises only from two dissimilar treatments and not from similar treatments."

Therefore, the existence of discrimination mandates dissimilar treatment of similar persons or subjects. I observe that, the petitioner along with other teachers were transferred in order to balance the teachers available in the zone. Therefore, I find that, the Petitioner has not been treated differently from persons who have been similarly circumstanced.

Having eliminated the possibility of differential treatment, I now, find it apposite to consider the ground of arbitrariness under Article 12(1).

In the case of **Perera v. Monetary Board of the Central Bank and Ors. (1994) 1 Sri L.R. 152**, with regard to promotion/recruitment in the public sector, it was observed that-

"Persons are entitled to complain ... if they were invidiously or arbitrarily treated by or in the selection process"

The meaning of arbitrariness with regard to the principles enumerated in Article 12(1) can be understood from the interpretation of Article 14 of the Indian Constitution.

In the case of **Sharma Transport v. Government of A.P. (2002) 2 SCC 188**, it was observed-

"The expression 'arbitrarily' means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

(Emphasis added)

In the case of **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**, it was observed-

"The principle of reasonableness, which legally and philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

(Emphasis added)

The above view was re-iterated in the case of **R.D. Shetty v. International Airport Authority, (1979) 3 SCC 489-**

“The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law.”

Therefore, it is clear that reasonableness is an essential element of non-arbitrariness.

Considering the facts of the case, I find that the transfer had been done in accordance with paragraph 8:2 of the Education Ministry Circular 1/2016 and the transfers were all within the Colombo North Division of the Zone, for the purpose of balancing the teachers. Therefore, I find that the procedure adopted was reasonable and within the ambit of the prescribed law. Owing to the presence of reasonableness, the transfer procedure becomes non-arbitrary.

In addition to the aforementioned findings, I find it pertinent to make the following observations.

The Petitioner, at the time of the first transfer of dispute, had protested the transfer and requested Kalaimagal Tamil Vidyalayam, Colombo 14, since there was an English teaching vacancy in the said school. Moreover, it is clear from the contents of the Petition that the Petitioner has, since the time of the first transfer, had objections against each of his transfers, even before he could report to the newly assigned work place.

All the transfers that the Petitioner has disputed was well within the zone in very close proximity and were done in accordance with the National Transfer Policy for the purpose of balancing the teachers within the zone. Therefore, I find that the conduct of the Respondent on disputing all of the stated transfers, reflects his intentions to teach English, rather than arts, although he has not specialized in English.

In response to the Respondents' contention that the Petitioner had difficulty in getting along with the Principals of Schools, the Petitioner, in Paragraph 7 of the counter-

objections filed by him, has stated that, he is an “intellectual giant” and that, it is not his conduct that is the cause for the developments that occurred. Considering these submissions, I am of the view that, the reasons for the alleged difficult relationship shared between the Petitioner and the Principals of Schools is not an essential issue that has to be addressed by us for the purpose of determining an Article 12(1) violation with regard to the disputed transfer procedure.

For the reasons already enumerated by me, I find that, the transfer procedure was just and reasonable. Therefore, I find that, there is no violation of the Petitioner’s fundamental right under Article 12(1).

Accordingly, I dismiss the Application and grant no cost.

Application dismissed.

JUDGE OF THE SUPREME COURT

B. P. ALUWIHARE, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT