

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

In the matter of an application under and
in terms of Articles 17 & 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

SC. FR. Application No. 261/2013

Alagaratnam Manoranjan
22/1, Racca Lane,
Racca Road,
Chandukuli, Jaffna.

Petitioner

Vs.

1. Hon. G.A. Chandrasiri
Governor, Northern Province,
Governor's Secretariat,
Old Park,
Kandy Road,
Chundukuli, Jaffna.
2. Ms. R. Wijjaludchumi
Chief Secretary,
Chief Secretary's Secretariat,
Northern Province Council,
187, Adiyapatham Road,
Thirunelvely, Jaffna.
3. Dr. Dayasiri Fernando,
Chairman
4. Mr. Palitha Kumarasinghe, PC.
Member.
5. Mrs. Sirimavo A. Wijeratne
Member
6. Mr. S.C. Mannapperuma
Member

SC. (FR) 261/2013

7. Mr. Ananda Seneviratne
Member
8. Mr. N.H. Pathirana
Member
9. Mr. Thillai Nadarajah
Member
10. Mr. D.W. Ariyawansa
Member
11. Mr. Mohamed Nahiya
Member

All of

Public Service Commission
177, Nawala Road,
Narahenpita,
Colombo 5.

12. The Hon. Auditor General
306/72, Polduwa Road,
Battaramulla.
13. Secretary to the Treasury, and
Secretary to the Ministry of Finance
and Planning,
The Secretariat,
Colombo 01.
14. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

15. Hon. Justice C.V.Vigneswaran
Chief Minister-Northern Province,
Chief Minister's Office,
26, Somasunderam Avenue,
Chundukuli, Jaffna.

15th Added Respondent

Before : Saleem Marsoof, PC. Acting C.J.
Chandra Ekanayake J. &
Eva Wanasundera, PC,J.

Counsel : Senani Dayaratne with Mrs. Nishanthi Mendis for the
Petitioner.

J.C. Weliamuna with Pulasthi Hewamanne for the 15th
Added Respondent.

Nerin Pulle, DSG., for the 1st, 2nd, 13th and 14th Respondents.

Argued On
Preliminary Objections : **23-06-2014**

Written
Submissions filed : By the Petitioner on **09-07-2014**
By the 1st, 2nd, 13th & 14th Respondents on **04-07-2014**

Decided On : **11-09-2014**

* * * * *

Eva Wanasundera, PC.J.

Having heard the parties, and having gone through the written submissions tendered by the parties, this order deals with the preliminary objection taken by the 1st, 2nd, 13th and 14th Respondents that the Petitioner's application to this Court is time barred.

For the purpose of dealing with this preliminary objection, it is crucial to determine the date on which the Petitioner's right to seek relief from this Court for the alleged infringement of the Petitioner's fundamental rights starts to run. The provisions of law

with regard to this matter are contained in Article 126(2) of the Constitution and Section 13 of the Human Rights Commission of Sri Lanka Act No. 21 of 1996.

Article 126(2) of the Constitution reads as follows:-

“Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, **within one month thereof**, in accordance with such rules of Court as may be in force, **apply to the Supreme Court**”.

Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 reads as follows:-

“ Where a complaint is made by an aggrieved party in terms of Section 14, **to the Commission, within one month of the alleged infringement** or imminent infringement of a fundamental right by executive or administrative action, **the period within which the inquiry into such complaint is pending before the Commission**, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution.”

The Petitioner’s contention is that the letter of transfer he seeks to challenge is not ‘P12’ dated 08-01-2013 but ‘P17’, which is dated 04th April 2013 and that he has made an application to the Human Rights Commission within one month thereof and due to that reason, according to Section 13 of the Human Rights Commission Act, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by the Petitioner in terms of Article 126(2) of the Constitution.

The Petitioner alleges in paragraph 9 of the Petition, that he was wrongfully transferred from the Post of Deputy Chief Secretary/Finance, in the Provincial Treasury of the Northern Provincial Council. The Petitioner alleges that by letter dated 8th January

2013 marked 'P12', he was informed by the 2nd Respondent, pursuant to a direction of the 1st Respondent, that he was temporally attached to the Chief Secretary's Secretariat with immediate effect until further orders are made. By document marked 'P15', dated 27.02.2013 the Petitioner wrote to the 1st Respondent through the 2nd Respondent specifically stating that the Petitioner has complied with the Order made by the 1st Respondent, which was intimated to him by the 2nd Respondent by letter dated 8th January 2013, meaning that he has reported to the Chief Secretary's Secretariat, having left the former place of work, as Deputy Chief Secretary-Finance, Provincial Treasury of the Northern Provincial Council. Thereafter he made an appeal requesting that he be authorized to resume duties in his former office. It is clear from the Petitioner's letter 'P15' that by the time he wrote that letter, he had accepted the transfer to the Chief Secretary's Secretariat in compliance with the order of transfer contained in 'P12' dated 08-01-2013.

The Petitioner had worked at the Chief Secretary's Secretariat for almost three months before he was appointed as Officer-in-Charge, Training Centre, Management Development and Training Institute, Mannar by 'P18', dated 04-04-2013 by P15 dated 27-02-2013, the Petitioner complained to the 1st Respondent that he should be allowed to resume his duties as Deputy Chief Secretary/Finance, which position he lost as far back as 8th January 2013. It is more than evident from the pleadings of the Petitioner contained in the Petition that he was complaining of him being transferred out of the position of the Deputy Chief Secretary-Finance which occurred on 08-01-2013.

The application before the Human Rights Commission was filed on 10.04.2013. This date is more than three months after the date of the alleged infringement of the fundamental right. Furthermore, by 'P31' dated 06-05-2013 the 2nd Respondent, the Chief Secretary of the Northern Provincial Council has informed the Human Rights Commission that the Petitioner has never assumed duties at the Training Centre, Mannar as directed by the 2nd Respondent's letter dated 04-04-2013, but he was attached to the Governor's Office even at that time. Thereafter, whatever happened at the Human Rights Commission has not been placed before Court. In fact the Petitioner has failed to adduce evidence to establish that there was an inquiry pending before the

Human Rights Commission at the time this application was filed before this Court. Even at the time of arguing this matter on 23-06-2014 the Petitioner did not attempt to make available to Court any evidence to show that there was an inquiry pending before the Human Rights Commission. Any way no application was filed before the Human Rights Commission within one month from the date of transfer, i.e. 08-01-2013.

It can be seen quite clearly that 'P17' is not the letter by which the Petitioner was transferred. It is a letter which was issued long after the letter of transfer which is 'P12' dated 08th January 2013 of which the Petitioner had knowledge. When the Petitioner received P12 dated 08-01-2013, he came to know the fact that he was transferred out of the post he held in the Provincial Office and out of the place he was working as Deputy Chief Secretary-Finance. He is seeking to challenge the decisions taken by the Respondents at that time and he is praying in the Petition, to be placed back in that post and in that place.

I wish to discuss what is meant by a "transfer". Black's Law Dictionary describes a transfer as "removal of a person or thing from one place to another". In the instant case, the Petitioner is complaining of getting transferred out of the Provincial Treasury – Northern Provincial Council where he was working as Deputy Chief Secretary Finance. He states that he was transferred out of that place to the Training Centre, Mannar Management and Development Training Institute on 04-04-2013 which is totally factually incorrect. He was transferred out of the Provincial Treasury on 08-01-2013 to the Chief Secretary's Secretariat where he worked for 3 months. It was, 3 months afterwards, that the Petitioner was transferred to the Management and Development Training Institute by P17 dated 04-04-2013 from the Chief Secretary's Secretariat. Therefore the transfer that the Petitioner is complaining of, occurred on 08-01-2013 and not on 04-04-2013. The complaint to the Human Rights Commission was made on 10-04-2013. Incidentally it is also observed by this Court that the Petitioner never reported to the Management and Development Training Institute as directed by P17 and was by 10-04-2013 still attached to the Chief Secretary's Secretariat.

Going through the authorities namely, **Roshan Mahesh Ukwatta Vs. Sub Inspector Marasinghe, OIC Crime, Welikada Police Station and Others** SC(FR) 252/2006 S.C. Minutes of 15-12-2010, Justice Ekanayake overruled the preliminary objection on the basis that the Petitioner was incarcerated even at the time the petition was filed and he had been tortured. She quoted Justice Sharvananda CJ. in **Namasivayam Vs. Gunawardena 1989 1 SLR 394**, as the basis for over- ruling the preliminary objection which I would like to quote again “ *To make the remedy under Article 126 meaningful to the applicant, the one month prescribed by Article 126(2) should be calculated from the time that he is under no restraint. If this liberal construction is not adopted for petitions under Article 126(2) the Petitioner’s right to his constitutional remedy under Article 126 can turn out to be illusory. It could be rendered nugatory or frustrated by continued detention*”.

In **Subasinghe Vs. IGP**. SC.(Spl) Application 16/1999, SC. Minutes of 11.09.2000, Justice S.N. Silva CJ. upholding the preliminary objection observed that “The Petitioner had failed to adduce any evidence that there has been an inquiry pending before the Human Rights Commission. In the circumstances we have to up-hold the preliminary objection raised by the Learned State Counsel”.

In **Divalage Upalika Ranaweera Vs. Sub Inspector Vinisias SC**. Application No. 654/2003 SC. Minutes of 13-05-2008, Justice Gamini Amaratunga analysed Section 13(1) of the Human Rights Commission Act No. 21 of 1996 as well as Section 14 of the said Act read with Article 126(2). He has mentioned that there was no material placed before Court by the Petitioner to show that there had been an inquiry before the Human Rights Commission into his complaints. The preliminary objection relating to the time bar was upheld and the Petitioner’s application was dismissed.

In **Kariyawasam Vs. Southern Provincial Road Development Authority and 8 Others** 2007, 2 SLR 33, Justice Amaratunga again analysed the relevant provisions of the law. The impugned transfer was dated 14-03-2006. The application to the Human Rights Commission was on 27-03-2006. It was within one month. The HRC had acted upon the complaint and called for observations from the authorities which were not

replied but set in motion the process of holding an inquiry and the inquiry was pending before the HRC. The Fundamental Rights application was filed on 02-05-2006 but since the inquiry before the HRC was pending, the Supreme Court held that, “In those circumstances the Petitioner is entitled to claim the benefit conferred by Section 13(1) of the Human Rights Commission Act. The Petitioner’s application to the Supreme Court was not time barred”. In the instant case, the Petitioner has not filed a complaint to the HRC within one month from 08-01-2013. The complaint was filed on 10-04-2013 clearly after one month, and is in contrast to the facts in the ***Kariyawasam Vs. Southern Provincial Road Development Authority and 8 Others*** case.

I am of the opinion that Section 13 of the Human Rights Commission Act No. 31 of 1996 should not be interpreted and/or used as a rule to suspend the one month’s time limit contemplated by Article 126(2) of the Constitution, particularly when the person alleging the violation of his fundamental rights has not made his complaint to the HRC. within one month of the alleged violation. A citizen of this country is protected by the Constitution with regard to his fundamental rights. The Provisions of an ordinary Act of Parliament should not be allowed to be used to circumvent the provisions in the Constitution.

Thus, having considered the facts placed by the documents before this Court and the submissions made by the parties with regard to Article 126(2) of the Constitution as well as Sections 13 and 14 of the Human Rights Commission, I hold that the Petitioner has failed to complain to the HRC within one month of the date of the transfer as well as to come by way of a Fundamental Rights Application to this Court within one month of the impugned infringement of a fundamental right. I uphold the preliminary objection that the application is time barred. The application is dismissed in limine. I make no order for costs.

Judge of the Supreme Court

Saleem Marsoof, PC. Acting C.J.

I agree.

Acting Chief Justice

Chandra Ekanayake J

I agree.

Judge of the Supreme Court