

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

In the matter of an application in terms of  
Articles 12(1), 14(1)(g) and 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka

G.G.H.N. Gunasekera,  
95/35, Sumudu Place,  
Samagi Mawatha, Magamma,  
Homagama.

**Petitioner**

**SC. FR. Application No. 270/2016**

**Vs,**

1. Chief Secretary,  
Provincial Council of the Western Province,  
Office of the Chief Secretary - Western  
Province,  
“Sravasthi Mandiraya”, 32,  
Sri Marcus Fernando Mawatha,  
Colombo 07.

**Presently at**

No. 204, Western Provincial Council Office  
Complex,  
Level 4, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

2. Deputy Chief Secretary (Planning),  
Provincial Council of the Western Province,

Office of the Chief Secretary - Western  
Province,  
“Sravasthhi Mandiraya”, 32,  
Sri Marcus Fernando Mawatha,  
Colombo 07.

**Presently at**

No. 204, Western Provincial Council Office  
Complex,  
Level 4, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

3. Director (Planning),  
Provincial Council of the Western Province,  
Office of the Chief Secretary - Western  
Province,  
“Sravasthhi Mandiraya”, 32,  
Sri Marcus Fernando Mawatha,  
Colombo 07.

**Presently at**

No. 204, Western Provincial Council Office  
Complex,  
Level 4, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

4. Deputy Chief Secretary (Administration),  
Provincial Council of the Western Province,  
Office of the Chief Secretary - Western  
Province,  
“Sravasthhi Mandiraya”, 32,  
Sri Marcus Fernando Mawatha,  
Colombo 07.

**Presently at**

No. 204, Western Provincial Council Office  
Complex,  
Level 4, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

5. Hon. Ranjith Maddumabandara,  
Minister of Public Administration and  
Management,  
Ministry of Public Administration and  
Management,  
Independent Square,  
Colombo 07.
  
- 5A. Hon. Ranjith Maddumabandara,  
Minister of Public Administration,  
Disaster Management and Rural Economic  
Affairs,  
Ministry of Public Administration,  
Disaster Management and Livestock  
Development,  
Independent Square,  
Colombo 07.
  
- 5B. Hon. Janaka Bandara Thennakoon,  
Minister of Public Administration,  
Home Affairs, Provincial Councils and Local  
Government,  
Ministry of Public Administration,  
Home Affairs, Provincial Councils and Local  
Government,  
Independent Square,  
Colombo 07.
  
- 5C. Hon. Janaka Bandara Thennakoon,  
Minister of Public Service, Provincial Councils

and Local Government,  
Ministry of Public Service, Provincial Councils  
and Local Government,  
Independent Square,  
Colombo 07.

6. Secretary,  
Ministry of Public Administration and  
Management,  
Independent Square,  
Colombo 07.

6A. Secretary,  
Ministry of Public Administration,  
Disaster Management and Livestock  
Development,  
Independent Square,  
Colombo 07.

6B. Secretary,  
Ministry of Public Administration,  
Home Affairs, Provincial Councils and Local  
Government,  
Independent Square,  
Colombo 07.

6C. Secretary,  
Ministry of Public Service, Provincial Councils  
and Local Government,  
Independent Square,  
Colombo 07.

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

8. The Governor,  
Western Province,  
5<sup>th</sup> Floor, 109,  
Galle Road,  
Colombo 03.

**Presently at**

No. 204,  
Western Provincial Council Office Complex,  
Level 10, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

**Respondents**

**Before:**           **Justice P. Padman Surasena**  
**Justice E.A.G.R. Amarasekara**  
**Justice A.L. Shiran Gooneratne**

**Counsel:**        Dr. Jayatissa de Costa, PC, with Wijeratne Hewage and Chanuka Ekanayake **for the Petitioner.**

Uditha Egalahewa, PC, with Damitha Karunaratna, Arunodha Jayawardena **for the 1<sup>st</sup> to 4<sup>th</sup> and 8<sup>th</sup> Respondents.**

Rajitha Perera, SSC **for the Hon. Attorney General.**

**Argued on:**       17/02/2021

**Decided on:**     **28/10/2021**

## **A.L. Shiran Gooneratne J.**

The Petitioner was working in the Chief Secretary's office under the Director (Planning) and the Deputy Chief Secretary, (Planning) of the Western Provincial Council. In the Amended Petition dated 01/10/2016, the Petitioner claims that he was released from the Western Provincial Council and assigned duties in the Ministry of Primary Industries by the Ministry of Finance and Planning by its impugned decision as reflected in document marked P11, which the Petitioner claims was in violation of his fundamental rights guaranteed under Article 12(1) and 14(1)(g) of the Constitution. Leave to proceed was granted on 15/11/2017, on the alleged infringement of Article 12(1) of the Constitution.

The facts of the case as established by the pleadings and the documents therein are set out as follows.

The Petitioner was appointed to Grade II class II in the Planning Service and was posted to the Provincial Council of the Western Province with effect from 22/06/2009. The Petitioner states that due to his unblemished service record he became popular among the members of the Provincial Council, which prompted some of his colleagues to show displeasure towards him. Such acrimonious behavior towards the Petitioner had prevented him from performing his lawful functions and duties in the Planning Department.

By letter dated 24/09/2013, marked R5, fellow officers at the Planning Department had informed the Deputy Chief Secretary (Planning) and the Chief Secretary, that due to the unsatisfactory working relationship with the Petitioner, they find it impossible to carry out their duties. Letters written to the 1<sup>st</sup> Respondent by several management assistants had requested that the Petitioner be transferred from his post. According to letter dated 14/07/2014 marked R6, and 14/07/2014 marked R8, fellow officers have alleged that working with the Petitioner has become an impossibility due to arduous accusations and unwarranted interference by the Petitioner with their work.

The 1<sup>st</sup> Respondent contends that due to the conduct of the Petitioner, severe hardship and inconvenience was caused to the Audit branch and its co-workers. Therefore, he requested that the Petitioner be transferred out of the said branch. (Documents marked R12, R13 and R14). Due to the unsatisfactory working relationship with other officers, the 1<sup>st</sup> Respondent by letter dated 29/09/2014 marked R14, has written to the Secretary of the Ministry of Finance and Planning that the Petitioner be released from service from the Western Provincial Council.

However, at the request of the Petitioner, a committee was appointed to look into the administrative issues faced by the Planning Department. Accordingly, the Director of Internal Audit conducted an inquiry into this matter and by letter dated 05/11/2014, marked R13, recommended that the Petitioner be given a service transfer or a release from the Provincial Council.

In the circumstances, the Petitioner filed a fundamental rights application bearing No. SC/FR/70/2015 allegedly, to safeguard his rights to engage in lawful occupation and to discharge his duties. However, this application was withdrawn by the Petitioner.

Thereafter, by letter dated 07/06/2016, the Petitioner was summoned by the 4<sup>th</sup> Respondent (Deputy Chief Secretary (Administration)) for an inquiry relating to alleged disputes arising over employee duties in the Planning Division. The Inquiry was scheduled for 08/06/2016, at 10.30 a.m. The Petitioner states that he did not appear before the Committee of Inquiry on the said date due to the Planning Division not receiving the letter scheduling the inquiry on time. However, the inquiry had proceeded in the absence of the Petitioner which the Petitioner claims to be a denial of his right to defend. Thereafter, by the impugned letter dated 04/08/2016 marked P11, the Petitioner was released from the Western Provincial Council and was required to report to the Ministry of Public Administration and Management.

The Petitioner submits that in the absence of a request from the 5<sup>th</sup> and 6<sup>th</sup> Respondents to obtain the services of the Petitioner, the 1<sup>st</sup> Respondent's decision to transfer the Petitioner

from the Western Provincial Council to the Ministry of Public Administration and Management constitutes illegal, arbitrary and mala-fide actions which violates the fundamental rights guaranteed by Article 12(1) of the Constitution.

The Petitioner prayed, *inter-alia*, to quash the decision of the Respondents contained in the impugned document marked P11, which released the Petitioner from the service of the Western Province Provincial Council.

The claim, as set out in the Petition is based on the following contentions, that;

- a) in the absence of lawful representation by the Petitioner, the decision of the Commission of Inquiry held on 08/06/2016, to transfer the Petitioner from the Western Provincial Council to the Ministry of Planning and Management on the basis of service requirement, is illegal and ultra vires.
- b) in the absence of a request from the 5<sup>th</sup> and 6<sup>th</sup> Respondents to have the Petitioner released on service requirement, the 1<sup>st</sup> Respondent had no authority to fill in service requirements of an institution other than the Provincial Council of the Western Province and as such the decision to transfer the Petitioner from the Western Provincial Council is ultra vires, illegal and unjustifiable.

Article 12 (1) of the Constitution deals with the right to equality which states that:

*"All persons are equal before the law and are entitled to the equal protection of the law"*

In ***Ramuppillai Vs. Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and Others***, Fernando J. held:

*"that the term 'the law' contained in Article 12(1) relates not only to the 'law' as it is conventionally understood and interpreted, it would include both subordinate legislation and executive action. Thus, for the purpose of Article 12, schemes of recruitment, promotion and appointment would come within the scope of the term 'the law'*

The Secretary to the Ministry of Public Administration and Management by letter dated 19/11/2016, marked R3, released the Petitioner from the Western Province Public Service to the Ministry of Primary Industries. In this application the Petitioner has challenged his release from the Western Province Public Service as reflected in the impugned document marked P11, however the Petitioner has not challenged the decision to report to work at the new service station i.e., Ministry of Primary Industries as reflected in document marked R3. On the said premise, the learned President's Counsel appearing for the 1<sup>st</sup> to 4<sup>th</sup> and 8<sup>th</sup> Respondents raised a preliminary objection to this application stating that,

*“The application of the Petitioner is now academic and the relief prayed for by the Petitioner cannot be granted by this court”.*

Since the questions of law posed by the Petitioner would substantially answer the issue of futility, I will now turn to the merits of this application.

According to Paragraph 12 of the Amended Petition, the Petitioner received a letter dated 07/06/2016, (Notice of Inquiry marked P10) from the Deputy Chief Secretary, (Administration) summoning him for an inquiry relating to the alleged disputes over duties of the employees in the Planning Division.

The Petitioner claims that it was not practically possible for him to appear before the Committee of Inquiry on short notice, which the Petitioner claims to be a deliberate act on the part of the 1<sup>st</sup> Respondent to keep him away from the inquiry. By letter dated 08/06/2016 marked, 2P9, the Petitioner has sought for further time to participate in the inquiry on the basis that he received the said notice on 08/06/2016, at 11.10 a.m. The hand written entry of the figures 11.10 a.m. indicating the time acknowledging receipt of notice by the Planning Division is disputed by the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent's position is that the hand written date stamp entry, 11.10 a.m. appearing in the Notice of Inquiry was placed fraudulently by the Petitioner to deliberately avoid the inquiry.

The 1<sup>st</sup> Respondent contends that the inquiry was carried out 20 meters away from the Petitioner's own division and therefore, the Petitioner had no difficulty in attending the inquiry on the given date. It is further contended that the letter marked 'P10' was delivered in the morning of 08/06/2016, to the Petitioner to grant the Petitioner sufficient time to participate in the inquiry and was not delivered at 11.10 a.m. as alleged by the Petitioner and deny any *mala fides* on their part.

Based on the report submitted by the Inquiry Committee, it is observed that on the date of inquiry, the Petitioner was not found in the workplace or could not be contacted by telephone. However, the attendance summary which is marked R21, indicates that on 08/06/2016, the Petitioner was present at the workplace between 9.11 a.m. and 4.21 p.m. The 1<sup>st</sup> Respondent contends that the Petitioner was requested to make a statement but refused stating that he had not received any written request to do so. However, having given a written request, the Petitioner failed to provide a statement.

According to the findings of the Committee of Inquiry, the Petitioner was given sufficient time and opportunity to be heard but has deliberately refrained from participating at the inquiry. By letter dated 04/08/2016, the Petitioner was released from the Western Provincial Council to report to the Ministry of Public Administration and Management on grounds of exigencies of service.

Responding to the complaints brought against him by his fellow officers, that it has become impossible to work with the Petitioner, as more fully set out in documents marked R15, R16, to R18, the Petitioner states that most of the officers who complain are Management Assistants and officers who have not worked under him or who are not competent to comment on his duties and accordingly has denied all allegations leveled against him.

The Petitioner strongly alleges that due to his continuous revelations of fraudulent and dishonest transactions of the officers attached to the Provincial Council, the superior officers of the Planning Division were desperate to get rid of him and therefore maliciously engineered his release. The Petitioner states that there was no dispute between himself and

fellow officers in his department and denies that he requested a committee to be appointed to look into the problems faced by him and fellow officers. However, the Petitioner states that he was aware that a Committee of Inquiry was scheduled to inquire into allegations brought against him. The said Committee was appointed by the 1<sup>st</sup> Respondent to look into the problems in the Planning Division.

In ***Tennakoon, Assistant Superintendent of Police Vs. T.P.F. De Silva, Inspector General of Police and others, (1997) 1 SLR 16 at page 34, Fernando J.*** delivering a majority judgement on the Petitioners rights under Article 12(1), observed that:

*“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”.*

In the given circumstances, the decision to appoint a committee to look into the unsatisfactory relationship between the Petitioner and fellow officers, in my view, was best in the public interest.

In defining a working relationship in the public interest, in ***Tennakoon, Assistant Superintendent of Police Vs. T.P.F. De Silva, Inspector General of Police and others, (1997) 1 SLR 16 (supra)*** Fernando J. observed;

*“Let me assume, however, 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 1<sup>st</sup> Respondent; and it can only intervene if that opinion is found to be arbitrary, capricious, unreasonable or discriminatory (or otherwise violative of fundamental rights)”*

Deliberately or otherwise, the Petitioner did not participate at the Committee of Inquiry specially appointed to look into the grievances of the officers. If time constraints were to

prevent the Petitioner from participating at the said inquiry which was carried out a mere 20 meters away from the Petitioner's own Division, the most prudent thing for him to have done was to immediately present himself before the inquiring officer, the Deputy Chief Secretary, (Administration) and requested for further time, which he failed to do. The Petitioner merely avoided the inquiry process for reasons best known to him.

The strong stand taken by the Petitioner against holding an inquiry is amplified by the answer filed to the counter affidavit of the 1<sup>st</sup> Respondent, where he has reiterated that he never requested for an inquiry to be held. The Inquiring Officer's decision to transfer the Petitioner from the Planning Department was based on the materiel placed before him. It is observed that at no time has the Petitioner made a request that the proposed transfer be varied.

In the 1<sup>st</sup> contention, the inquiring officer's findings are challenged on the basis that the Petitioner was not given a reasonable opportunity to present his case. As noted above, the facts surrounding the inquiry fails to justify this position. The decision of the Inquiry Committee is not challenged in this application. In any event it would be inappropriate to review the decision of the Inquiry Committee and to substitute the opinion of court to that of the said decision. I am of the view that the inquiring officer considered the material placed before the committee objectively and reasonably before arriving at the impugned decision.

It is also clearly evident that the Petitioner was informed of the date of inquiry, however has failed to avail himself the opportunity of lawful representation before the committee of inquiry on the given date.

For the reasons stated above, the Petitioner's 1<sup>st</sup> contention should fail.

The 2<sup>nd</sup> contention of the Petitioner is that, when transferring the Petitioner to the Finance and Planning Ministry, the 1<sup>st</sup> Respondent failed to follow Procedural Rule 218 and 219 of the Public Service Commission, published in Gazette Notification No. 1589/30, dated 20/02/2009, marked P13. It is further contended that the decision to transfer the Petitioner

in terms of the said rules should necessarily be taken by the 6<sup>th</sup> Respondent, for reasons acceptable to him and accordingly the Petitioner moves to quash the impugned letter marked P11.

The Petitioner further states that the 1<sup>st</sup> Respondent nor any other Respondent has the authority to transfer the Petitioner in terms of Section 32 of the Provincial Councils Act No. 42 of 1987, since it shall apply to all officers in the Provincial Public Service.

According to the Petitioner, Procedural Rule 218 and 219 of the Public Service Commission, published in Gazette Notification No. 1589/30, dated 20/02/2009 (marked P13) should be followed and reasons for transfer should be made known to him. The Petitioner states that as a result of the arbitrary decision to transfer the Petitioner taken by the 1<sup>st</sup> and 8<sup>th</sup> Respondents, denied him of his employment, monthly salary and professional dignity he earned during his carrier.

The Petitioner was released by the 4<sup>th</sup> Respondent from the Provincial Public Service of the Western Province in order to report to the Ministry of Administration and Management on the basis of service requirements.

In terms of the letter of appointment dated 11/12/2008 issued by the Public Service Commission, marked P1, the Petitioner is an officer belonging to the Planning Service. The Secretary to the Ministry of Finance and Planning by letter dated 19/06/2009, marked P2, released the Petitioner to serve in the Western Province in terms of clause 7 of the Letter of appointment, service minute and the PSC Rules.

According to the terms of Service Minute of the Planning Service Rule 12(i), in Gazette Bearing No. 1670/32, published on 10/09/2010, marked R23, and the Procedural Rule 218 and 219 of the Public Service Commission (document marked P13) and the Public Services Gazette No. 1941/41, published on 20/11/2015 marked R24, if the Provincial Council has no further need to retain the services of the Petitioner, it is within the powers of the authorities of the Provincial Council to release the Petitioner from service of the Provincial Council.

Due to exigencies of service, the Petitioner was released from the Western Province Public Service to the Planning and Administration Ministry by letter dated 02/08/2016 marked R2. The Secretary to the Ministry of Public Administration and Management by letter dated 19/11/2016 marked R3, informed the Petitioner to report to the new station referred to therein.

Section 32 of the Provincial Council Act states thus;

- 1) Subject to the provisions of any other law the appointment, transfer, dismissal and disciplinary control of officers of the Provincial Public Service of each Province is hereby vested in the Governor of that Province.*
- 2) The Governor of a Province may, from time to time, delegate his powers of appointment, transfer, dismissal and disciplinary control of officers of the Provincial Public Service to the Provincial Public Service Commission of that Province.*
- 3) The Governor shall provide for and determine all matters relating to officers of the Provincial Public Service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principles to be followed in making promotions and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers, In formulating such schemes of recruitment and codes of conduct the Governor shall, as far as practicable, follow the schemes of recruitment prescribed for corresponding officers in the public service and the codes of conduct prescribed for officers holding corresponding officers in the public service.*

Rule Number 218 and 219 deals with transfers on Exigencies of Service. Accordingly, Rule 218-A states;

*Public Officer may be transferred on exigencies of service by the Appointing Authority for any one of the following reasons,*

- (i) Where the services of an officer is no longer needed at his present station;*

- (ii) *Where an officer is needed for service in another station or that particular officer himself is needed;*
- (iii) *Where it is found, due to administrative reasons, that the retention of an officer in his present station is not suitable.* (Emphasis is mine)

Rule 219 states,

*Before a Public Officer is transferred on exigencies of service, the Authority with Delegated Power shall personally satisfy himself that need has actually arisen as specified in Section 218 above and that the transfer cannot be deferred till the next annual transfers.*

In terms of Section 32 of the Provincial Council Act No. 42 of 1987, all powers relating to appointment, transfer, dismissal and disciplinary control of public officers of the Provincial Council are vested with the Governor and the release of officers from service is on the advice and the concurrence of the Governor. On a plain reading of this Section, it is clear that such power can be delegated by the said authority.

The Petitioner also contends that the 1<sup>st</sup> Respondent or any other officer is not empowered to transfer the Petitioner from the Provincial Council since the authority to transfer the Petitioner is exclusively vested with the 6<sup>th</sup> Respondent in terms of Procedural Rule 218 and 219 of the Public Service Commission, published in Gazette Notification No. 1589/30 dated 20/02/2009. (P13).

Procedural Rule 218, 219 and 221 of the Public Service Commission Rules are contained in Chapter XVIII titled transfers and under the sub heading Transfers on exigencies of service.

In *SC/FR/484/2011 decided on 16/01/2017*, K. Sripavan, C.J. discussed Procedural Rule 218 and 219 of the Public Service Commission published in Gazette Notification No. 1589/30 dated 20/02/2009, where he observed that;

*“The Procedural Rules of the Public Service Commission published in Government Gazette (Extra Ordinary) No. 1589/30 dated 20/02/2009 deals with the types of transfers that could be effected. Clause 196 of the said Rules reads thus:*

*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.”*

In terms of Section 32 of the Provincial Council Act No. 42 of 1987, all powers relating to public officers of the Provincial Council are subject to the powers vested with the Governor and therefore, the release of the Petitioner from his service should be with the concurrence of the Governor. The Governor may delegate such powers to the Provincial Public Service Commission and the said Provincial Public Service Commission may delegate its powers to the Chief Secretary or any officer of the Provincial Public Service. Therefore, the Petitioner’s release from the Provincial Public Service, on the basis of service requirements, (P11) is valid in law.

The Senior State Counsel appearing for the 7<sup>th</sup> Respondent contends that the Petitioner’s position that the transfer was in violation of Procedural Rules 219 and 221 published in the Gazette extraordinary of 1589/30 dated 20/02/2009 is misconceived.

The learned Counsel has drawn the attention of court to the impugned letter marked P11, and also to documents marked R2 and R3. It is observed that the wording of the letters and the documents connected thereto, indicate that the Petitioner was released from the Provincial Public Service and not transferred under Chapter XVIII of the Public Service Commission Rules. Besides, even if it is considered as a transfer, in terms of Rule-218-A, smooth running of the present station falls within the exigencies of service.

Therefore the 2<sup>nd</sup> contention of the Petitioner also has to be rejected.

Accordingly, we hold that the Petitioner has failed in establishing that his fundamental rights guaranteed in terms of Articles 12(1) of the Constitution has been infringed by the actions of the Respondents.

The Petition is dismissed. I order no costs.

**Judge of the Supreme Court**

**P. Padman Surasena J.**

I agree

**Judge of the Supreme Court**

**E.A.G.R. Amarasekara J.**

I agree

**Judge of the Supreme Court**