

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

In the matter of an Application under
Article 26 of the Constitution read
together with Article 17 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

SC (FR) Application No. 356/2016

R.P.Karunaratna Bandara
No. 31, Nika Wewa Handiya,
Nochchiyagama.

PETITIONER

V.

1.P.B.Disanayaka

Governor of the North Central Province
Governor's Office, Anuradhapura.

2.S.G.M.C.K.Seniviratne

Chairman

3.H.M.K.Herath

Member

4.H.M.H.B.Ratnayaka

Member

Provincial Public Service Commission of
North Central Province,
Kachcheri Building, Anuradhapura.

5.Peshala Jayarathna

Chief Minister of North Central Province
Provincial Council Administrative Building
Harischandra Mawatha, Anuradhapura.

6.E.M.N.W.Ekanayaka

The Provincial Education Director,
Provincial Department of Education,
Anuradhapura.

7.D.M.Kumiduni Ariyawansa

Zonal Education Director
Anuradhapura Zonal Education Office
Anuradhapura.

8.W.T.A Manel

Secretary of the Ministry of Education
Of the North Central Province,
Provincial Council Administrative
Building,
Harischandra Mawatha, Anuradhapura.

9.N.M.N.R.B.Nwarathna

Senior Assistant Secretary of the
Ministry of Education of the North
Central Province, Provincial Council
Administrative Building,

Harischandra Mawatha, Anuradhapura.

10.K.A.Thilakarathna

Chief Secretary of the North Central
Province, Chief Secretary's Office,
Anuradhapura.

11.S.M.Kusumthilak

Principal,
Nivaththaka Chethiya Maha Vidyalaya
Anuradhapura.

12.Hon.Attorney General,

Attorney General's Department,
Colombo 12.

BEFORE:-S.E.WANASUNDERA,PC, J.

SISIRA J DE ABREW, J.

H.N.J.PERERA, J.

COUNSEL:- Shantha Jayawardena with Chamara Nanayakkarawasam and

Dinusha de Silva for the Petitioner

N.Wigneshwaren, S.S.C for the Respondents

ARGUED ON:- 19.01.2018

DECIDED ON:- 28.06.2018

H.N.J.PERERA, J.

The Petitioner filed the instant application challenging his transfer from the post of Principal by the 8th Respondent from Nivaththaka Chethiya Maha Vidyalaya, Anuradhapura on 13th September 2016.

This Court granted leave to proceed with the application under Article 12(1) of the Constitution.

The Petitioner states that he has served as a teacher and Principal in schools in rural areas of the country over a period of 23 years and while the Petitioner was serving as the Principal of the Nivaththaka Chethiya Maha Vidyalaya on 6th September 2016 the Petitioner was informed over the telephone by the Secretary to the School Development Committee that the 5th Respondent Chief Minister will be attending the school on 9th September at 9.30 a.m for a ceremony to lay foundation stone in order to commence the work relating to the proposed new school building. The petitioner was given only two days notice to arrange all required preparations for the laying of the foundation stone by the 5th Respondent. The Petitioner further states that on the same day evening he met the 7th and 8th Respondents and got detail instructions from them as to how the program should run at the opening ceremony. The Petitioner also was informed that the 5th Respondent was to address the gathering, following the laying out of the foundation and the tea party, therefore took steps to inform the parents of the Grade 8 students through the sectional head and the class teachers.

The Petitioner further states that they were expecting the 5th Respondent and the guests to reach the school by 9.30 am, however without any advance notice the 5th Respondent and his team arrived at the school at about 9.00 a.m. According to the Petitioner there was not much of a crowd assembled at that time but he proceeded to welcome the 5th Respondent and following the laying down of the foundation stone and the tea party, the 5th Respondent addressed the school children and parents at the School main hall. It is the Petitioner's position that the 5th Respondent made quite cynical comments when addressing the gathering alleging that there are school Principals who do not know as to how the bundle of beetle leaves should be handed to a guest and alleged that the Petitioner failed to get enough number of parents for the said meeting.

It is the position of the Petitioner that he realized that in the heat of the events he has handed over the bundle of beetle leaves inadvertently the wrong way around to the 5th Respondent and when the 5th Respondent was leaving the school after the said ceremony pointed a finger at him and accused the Petitioner as a 'boru karaya.'

The Petitioner allege that on the same day evening he was informed by the 6th Respondent, that the 8th Respondent requested the Petitioner to come to the Chief Ministry of the North Central Province and when he met the 8th Respondent he informed the Petitioner that the Petitioner would be transferred to a different

school with immediate effect on the orders given by the 5th Respondent. The Petitioner states that he came to know from the 8th Respondent that the reason for the said transfer is the unhappiness of the 5th Respondent with regard to the events that took place in the school at the said ceremony. The petitioner further states that he met the 5th Respondent on or about 13.09.2016 and apologized for any inadvertent mistake at the said ceremony held on 09.09.2016. However, the 5th Respondent was hostile towards the Petitioner and reiterated that the Petitioner would be transferred and thereafter, on the same day he was informed by the 8th Respondent that he has been transferred to Rabavewa Maha Vidyalaya in Anuradhapura.

It is the Petitioner's position that as he did not receive a letter of transfer he continued to work at the said school and on 14.09.2016, the 11th Respondent who was the Principal serving at Rabavewa Maha Vidyalaya, Anuradhapura came to his school in order to assume duties as the Principal of the said school and the Petitioner informed him that he has not yet received the transfer letter and the same day evening he has received a telephone call from the 5th Respondent to his mobile phone and that the 5th Respondent has threatened him that he should vacate the school with immediate effect and if not he will be subject to various difficulties including inquiries and even the dismissal from the service. The Petitioner claims that he recorded the said conversation using his mobile phone.

The Petitioner states that on the following day too he reported to work as usual and around 10 a.m the Petitioner was summoned by the 7th Respondent to the Zonal Education Director's Office and he was handed over a letter dated 13.09.2016 (P13) issued by the 8th Respondent transferring him on exigencies of service to Rambewa Maha Vidyalaya, Anuradhapura. Thereafter, upon receipt of the said letter of transfer the Petitioner went to the Chief Ministry of the North Central Province to submit an appeal. Thereafter the 7th Respondent summoned the Petitioner to the school and directed the Petitioner to hand over duties to the new Principal. At the school there were two officers from the Ministry of Education of the North Central Province and they handed over the Petitioner another letter of transfer dated 15.09.2016 issued by the 9th Respondent (P14) cancelling the aforesaid transfer of the Petitioner as the Principal of Rabavewa Maha Vidyalaya, Anuradhapura and attaching the Petitioner to the zonal Education Office of Anuradhapura on exigencies of service. The Petitioner states that on 15.09.2016 he assumed duties at the said zonal Education Office of Anuradhapura. However, he was not allocated with any function.

It is the Petitioner's position that he being an officer of Sri Lanka Principal's Service there is no duty or function that he can discharge at the Zone Education Office. The Petitioner claims that he was a Principal serving at a school coming under the purview of the North Central Provincial Council and that in case of Provincial Public Service, the powers relating to appointment, transfer, dismissal and disciplinary control is vested in 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. (Sec 32 of the Provincial Councils Act No.42 of 1987)

It is contended on behalf of the Petitioner that therefore, the Chief Minister or the Minister in charge of the subject of Education of the Provincial Council has no power in respect of appointment, transfer, dismissal and disciplinary control of officers of the provincial public service. The Petitioner concedes that the 8th Respondent has been delegated by the Provincial Public Service Commission with the powers pertaining to transfer.

The Petitioner contends that the 8th Respondent has to exercise her discretion/power independently and objectively and if the 8th Respondent surrenders and abdicates her discretion to some other person and acts under the dictates of such person, the exercise of discretion is ultra vires. The Petitioner claims that the 8th Respondent has surrendered and abdicated her discretion to the 5th Respondent and has acted on the dictation of the 5th Respondent and therefore the said transfer of the Petitioner is ultra vires. The Petitioner further claims that the Petitioner had been transferred simply because the 5th Respondent wanted the Petitioner to be transferred. The Petitioner contends that this is clearly visible from the documents marked R7 and P19. The letter addressed to the Human Rights Commission by the 8th Respondent (P19) clearly establishes that the 8th Respondent has acted on the advice of the 5th Respondent to transfer the Petitioner. The Petitioner claims that the 8th Respondent has misconstrued that transferring Principals is a policy matter that the Minister can decide and therefore she is bound to implement such an order. The Petitioner claims that it is manifestly clear that the purported administrative reason behind the transfer is that the Petitioner has failed to please the Chief Minister. In P19, the 8th Respondent has stated that the Chief Minister was unhappy because the participation of parents at the ceremony was poor. The Petitioner states that securing attendance of parents for a ceremony is not within the scope of duties of the Petitioner and what the Petitioner can do is to inform the parents and the participation of parents is not within the control of

the Petitioner. The Petitioner further claims that there was no exigency of service warranting the transfer of the Petitioner. Instead, transfer of the Petitioner is a punishment imposed upon the Petitioner due to the animosity of the 5th Respondent towards the Petitioner. Therefore the Petitioner states that the transfer of the Petitioner is arbitrary, irrational, unreasonable and malicious and is in violation of Article 12(1) and 14(1)(g) of the Constitution. The Petitioner complains that the Petitioner's fundamental rights guaranteed under Articles 12(1) and 14(1)(g) have been violated by the 5th and 8th Respondents and to grant reliefs prayed for in the Petition.

There is no dispute that the power to transfer officers of the category to which the Petitioner belongs had been delegated to the 8th Respondent by the Provincial Public Services Commission. It is the Petitioner's case that the 8th Respondent has implemented an 'order' of the 5th Respondent to transfer the petitioner, that the 8th Respondent has surrendered and abdicated her discretion to the 5th Respondent and acted on the dictation of the 5th Respondent, and therefore the transfer is ultra vires and void.

The 5th Respondent in his affidavit dated 4.9.2017 has stated that he along with other officials arrived at the school premises on the said day of the ceremony at around 9 a.m and found the Petitioner not ready and there was unnecessary delay and this was due to the inefficiency of the Petitioner which is indicative of his inability to manage a school of this nature, especially during an important development phase. The 5th Respondent has further stated that he expressed his concerns to the 8th Respondent about the inability of the Petitioner to carry out the important development work at the said school. Thus it is clearly seen that the 5th Respondent was not happy about the way the Petitioner conducted himself on the said date and thought that he is not fit enough to run a school where important development activities to be taken place. This clearly support the Petitioner's version that certain incidents did take place on this particular date and that the 5th Respondent was unhappy about them and complained so to the 8th Respondent.

The document R7 annexed to the affidavit submitted by the 8th Respondent and the document marked P19 clearly establish that the 8th Respondent has acted on the advice of the 5th Respondent to transfer the Petitioner. R7 clearly shows that the 5th Respondent has advised the 8th Respondent and the 7th Respondent to appoint an efficient Principal to the said school immediately. P19 very clearly establish the allegation made by the Petitioner that the 8th Respondent verily

believed that the Minister can make policy decisions and that she and the other officers are expected to implement and carry out such decisions.

This clearly establishes the fact that there was no other complaint against the Petitioner and that the 8th respondent transferred the Petitioner immediately to another school on the verbal advice given by the 5th Respondent. As contended by the Petitioner there was no exigency of service on the given date to transfer the Petitioner to a different school. The 5th Respondent has thought the Petitioner is not a fit person to be the Principal in a school where development work is to be carried out. The 5th Respondent was not happy about the way the Petitioner had carried out the day's program and had conveyed so, to the 8th Respondent. There is no doubt from the material placed before this court that the 8th Respondent has very clearly acted to satisfy the 5th Respondent and to transfer the Petitioner immediately to another school.

There is no evidence to show that the Petitioner was an inefficient Principal. Up to the date of the incident there has been no such complaints being made by any party. But the evidence indicate that the Petitioner was not a good organizer of functions, or public events. Taking into consideration all the events that took place on the said day in which the ceremony was held, one cannot state that the decision taken by the 8th Respondent to transfer the Petitioner immediately to another school is reasonable or justifiable. The 8th Respondent has very clearly acted to please the 5th Respondent and has taken a hasty decision to transfer the Petitioner to another school to satisfy the 5th Respondent, which is wrong. This clearly establishes the fact that the 8th Respondent had very clearly surrendered and abdicated her discretion to the 5th Respondent. This clearly establishes the fact that the 8th Respondent has failed to exercise her discretion independently and objectively as contended by the Petitioner.

The 8th Respondent in paragraph 15 of her affidavit dated 4th September 2017 has stated that the Petitioner, as the Principal of the school, was unable to carry out his responsibilities effectively especially in the context of the development and construction work planned. The 8th Respondent further states that the 5th Respondent expressed serious concerns to her about the ability of the Petitioner to carry out the important development work at the said school and she was of the opinion that the retention of the Petitioner as the Principal was not suitable and after consulting the 6th Respondent took steps to transfer the 11th Respondent who was the Principal of another school as the Principal of the said school.

The 8th Respondent in her affidavit has further stated that on this day when the 5th Respondent, along with other Officials including her arrived at the school, the Petitioner was not ready and there was unnecessary delay and that the Petitioner handed over the betel leaves incorrectly to the 5th respondent and found that there were no parents present inside the hall during the ceremony. The 8th Respondent also claims that she came to know from the school children who were present that their parents were not informed to attend the said program. In paragraph 21 of her affidavit the 8th Respondent has clearly stated that the removal and transfer of the Petitioner and the decision to transfer him is purely on the ground of his unsuitability to carry out operations favourable to the proposed development program and that it was a decision made for the purpose of ensuring the development of the school in order to raise the standard of education and facilities therein.

There is no doubt that the reason for the transfer of the Petitioner out from the said school was the dissatisfaction of the 5th respondent as to how the Petitioner conducted himself on this particular day and nothing more. The 8th Respondent has not stated anything else or given any other reason for the said transfer of the Petitioner from the said school. There is no allegation what so ever being made against the Petitioner that he was incompetent to be the Principal of the said school prior to the day this incident took place. The Petitioner had continued to be the Principal of the said school and there had been no complaints from anybody not even from the parents about his conduct or suitability to be the Principal of the said school prior to the date on which the Minister visited to lay the foundation stone to a new building. There were no complaints about the abilities and capabilities of the Petitioner to function as the Principal of the said school what so ever. And from the affidavit of the 5th and the 8th Respondent s it is very clearly seen that the 5th Respondent was not happy about the way the Petitioner handled the matters on the day of the program and thought that the Petitioner was incapable of carrying out responsibilities of the said development work and that they should have another efficient person from another school instead.

It is to be noted that this was an additional responsibility which had been cast on the Petitioner as the Principal of the said school. It is submitted that it is justifiable for the 5th Respondent to raise serious concerns about the suitability of the Petitioner to continue as Principal, given the heavy administrative burden occasioned by the development project. It is further submitted that the 5th Respondent had openly expressed his dismay not only in respect of the Petitioner's

organizational capacity but by his lack of knowledge with regard to Sri Lankan traditions. For these reasons the 8th Respondent has come to the conclusion that the retention of the Petitioner at the present station was not suitable for administrative reasons.

On a perusal of the objections filed by the 8th Respondent it is clearly seen that the 8th Respondent was clearly influenced by the concerns raised by the 5th Respondent on this particular day as to the suitability of the Petitioner to continue as the Principal in the said school. The said incidents had taken place on the day the foundation stone was laid for a new building in the said school premises. And there is no doubt that the main construction work would take some time to begin. What prompted the 8th Respondent to transfer the Petitioner immediately the following day? There is no doubt that the 8th Respondent had clearly acted very quickly to please the 5th Respondent.

The Petitioner is a person who had an outstanding career as an excellent school Principal. His service has been identified and appreciated by the Ministry of Education on several occasions. In 2015 he received the 'Guru Prathibha Prabha Award', awarded by the Ministry of Education for his performance.

The material before this court clearly establishes that the transfer of the Petitioner was neither a normal annual transfer nor on account of the exigencies of service. There is no material to justify the said transfer of the Petitioner immediately out of the said school where he intrinsically functioned as the Principal.

According to the Petitioner on the same day at about 3.30 p.m when the Petitioner was informed by the 6th Respondent, that the 8th Respondent requested the Petitioner to come to the Chief Ministry of the North Central Province, he went to the Chief Ministry and met the 8th Respondent who informed the Petitioner that he would be transferred to a different school with immediate effect on the orders given by the 5th Respondent. The reason given by the 8th Respondent for the alleged transfer is the unhappiness of the 5th Respondent with regard to the events transpired at said school in the morning. Thereafter, on or about 13.09.2016 the Petitioner met the 5th Respondent and apologized for any inadvertent mistake at the said ceremony held on 09.09.2016. However the 5th Respondent was hostile towards the Petitioner and reiterated that the Petitioner would be transferred.

It is conceded that the 8th Respondent has been delegated by the Provincial Public Service Commission with the powers pertaining to transfer. The 8th Respondent

exercises her delegated power which has been delegated by the Provincial Public Service Commission. The 8th Respondent has to exercise her discretion independently and objectively. In the instant case there is material to show that the 8th Respondent has surrendered and abdicated her discretion to the 5th Respondent and had acted under the dictates of the 5th Respondent. The 8th Respondent is prohibited from acting under the dictates of the 5th Respondent.

‘An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else.’ (vide: Chapter 10 of ‘Administrative Law’ Wade and Forsyth, 10th Edition, page 259)

See also page 269:- ‘The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and resulting decision is ultra vires and void.’

It is clearly seen that the 5th Respondent was highly dissatisfied the way how the Petitioner handled matters at the said ceremony which was held on 09.09.2016. The 5th Respondent has accordingly expressed his dissatisfaction to the 8th Respondent and had expressed his fear about the capabilities of the Petitioner to handle matters pertaining to the construction of the new building at the said school premises. No doubt that the 8th Respondent should have taken cognizance of the said fact and taken steps to remedy the situation. But instead of exercising her powers independently and objectively, the 8th Respondent had proceeded immediately to transfer the Petitioner from the said school to please the 5th Respondent which is wrong. In my opinion this was a duty which the 8th Respondent herself had to perform. In exercising that discretion the 8th Respondent could not abdicate her judgment in favour of anyone else however powerful that person may be. In Administrative Law if the person who has the power exercises his or her power wrongly, then such act or decision is ultra vires.

No doubt that the Petitioner is vested with some responsibilities when a new construction is to be carried out in the said school premises. The Petitioner will have to look into the safety of the school children, see that the studies of the school children are not disrupted or disturbed by the said activities, and provide all assistance for the authorities to carry out the said development activities without hindrance. No doubt the said construction work would be handled under the supervision of a separate branch of the Ministry of Education. This Court cannot

agree with the contentions of the 5th and the 8th Respondents that the Petitioner was not suitable to continue as the Principal of the said school for administrative reasons. In my view the sudden transfer of the Petitioner to another school was unreasonable. As held in *Range Bandara V Gen. Anuruddha Ratwatte and Another* [1997] 3 Sri .L. R.360, the summary transfer of the petitioner was a misuse of discretion. The decision to transfer was arbitrary, capricious and unreasonable and violative of the Petitioner's rights under Article 12(1).

Article 12 of the Constitution refers to the right to equality and Article 12(1) specifically states that,

“All persons are equal before the law and are entitled to the equal protection of the law”

“The basic principle governing the concept of equality is to remove unfairness and arbitrariness. It forbids actions, which deny equality and thereby becomes discriminative. The hall mark of the concept of equality is to ensure that fairness is meted out.”- *Bandaranayake, J. :- Karunathilaka & another V. Jayalath de Silva and others* [2003] 1 Sri.L.R 35 at page 41,42.

The 8th Respondent in paragraph 18 of her affidavit dated 04.09.2017, has stated that the Petitioner was requested to relinquish duties to the 11th Respondent, and as the Petitioner expressed the view that he was unwilling to be transferred to Rambewa Maha Vidyalaya and since the parents of that school too were not comfortable with the Petitioner being made Principal, the Petitioner was transferred to the Zonal Education Office, Anuradhapura.

The Petitioner in paragraph 25 of his Petition dated 10.10.2017 states that when he went to the school to hand over duties to the new Principal on 15.10.2016 two officers from the Ministry of Education of the North Central Province was waiting for him at the school. They handed over the Petitioner another letter of transfer dated 15.09.2016 issued by the 9th Respondent cancelling the earlier transfer of the Petitioner as the Principal of Rabavewa Maha Vidyalaya, Anuradhapura and attaching the Petitioner to the Zonal Education Office of Anuradhapura. The Petitioner complains that he assumed duties at the Zonal Education Office of Anuradhapura on 15.09.2016 and he was not allocated with any function. It is the Petitioner's position that he being an Officer of Sri Lanka Principal's Service there is no duty or function that he can discharge at the Zonal Education Office. The material before this Court very clearly establish that the Petitioner not only have

been transferred out from school but also had been without a good cause deprived from functioning as a school Principal until now.

I accordingly hold that the Petitioner has been successful in establishing that his fundamental rights guaranteed in terms of Articles 12(1) of the Constitution has been violated by the actions of the 8th Respondent. For the foregoing reasons I hold that the 8th Respondent had violated the Petitioners fundamental rights guaranteed under Articles 12(1) of the Constitution. Further I declare the two transfer orders marked P14 and P15 null and void.

Accordingly I direct the Respondents to appoint the Petitioner as the Principal of the Nivaththaka Chethiya Maha Vidyalaya, Anuradhapura, within two months from today. I direct the 8th Respondent to personally pay a sum of Rs 250,000/= as compensation to the Petitioner. The State shall also pay Rs 250,000/= as compensation and Rs 50,000/= as costs to the Petitioner. All payments to be made within two months from today.

JUDGE OF THE SUPREME COURT

S.E.WANASUNDERA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

SISIRA J .DE ABREW, J

I agree.

JUDGE OF THE SUPREME COURT

