

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

In the matter of an application under and in terms
of Article 17 and 126 of the Constitution.

SC/FR/Application
No.52/2018

Sella Kapu Lilani Abeychandra,
No.46/4,R.E.De Silva Avenue,
Heppumulla, Ambalangoda.
On behalf of

Koonamge Omindu Dewmika Shriyanga,
No.46/4, R.E.De Silva Avenue,
Heppumulla, Ambalangoda.

PETITIONER

1. Principal,
Dharmasoka College, Galle Road,
Ambalangoda.
2. K.K.K.Kodithuwakku,
The Principal,
Christ King College, Baddegama.
3. R.N Mallawarachchi,
Principal,
Southland College,
Galle.
4. S.K.S.De Silva,
Dharmosoka College,
Galle Road, Ambalangoda.
5. Monaka Niranjana,

Dharmosoka College,
Galle Road, Ambalangoda.

6. Ravindra Assalarachchi,
Dharmosoka College,
Galle Road, Ambalangoda.
7. Sunil Hettiarachchi,
Secretary, Ministry of Education,
'Isurupaya', Pelawatta, Battaramulla.
8. Akila Viraj Kariyawasam,
Hon.Minister of Education.
Ministry of Education,
'Isurupaya', Pelawatta, Battaramulla.
9. Hon. Attorney General,
Attorney General's Department,
Colombp-12.

RESPONDENTS

Before: Buwaneka Aluwihare, PC, J.

L.T.B. Dehideniya, J,

Murdu Fernando, PC, J.

Counsel: Darshana Kuruppu for the Petitioner

Nirmalan Wigneshwaran, SSC for AG.

Argued on: 27.08.2018

Decided on: 08.08.2019

L.T.B.Dehideniya J.

The Petitioner invokes the fundamental rights jurisdiction of this court, by stating that the rights of her child, guaranteed under the Articles 12(1) and 12(2) of the constitution have been violated by the acts of the 1st to 9th or any one or more of the Respondents in the process of admitting her child to the Grade 1 of the Dharmashoka College, Ambalangoda.

The Petitioner being a ‘Grama Niladhari’, was appointed for No.21D Mahaladuwa Division on 02-03-2009 and transferred to No.88, Randombe South Division on or about 09-03-2016. Upon the transfer, she has left the residence where she resided while serving the previous Grama Niladhari Division and moved to No.27/3, R.E De Silva Mawatha, Heppumulla and alleges that she is registered in the electoral registry for the year 2016. Subsequently, she shifted to the current residence No.46/4, R.E. De Silva Mawatha, Heppumulla, Ambalangoda and further alleges that she is registered in that electoral registry under the latter address.

After being shifted to the latter address, the Petitioner has made an application to Dharmashoka College, Ambalangoda under the category of the ‘children of parents who have been transferred upon the Government needs (hereinafter sometimes be called as the ‘transfer category’) to admit her child to the Grade 1 and the authorities have refused to admit the child. The Petitioner challenges the decisions of the authorities, which debarred her child from being admitted to the Grade 1.

The Petitioner’s contention is that, as per the circular No.22/2017, 4% of the total vacancies available to Grade 1 should be allocated for the children who have applied under ‘transfer category’ and alleges that there were 08 such vacancies under ‘transfer category’. The Petitioner states that of the applications received under transaction category, the 1st Respondent selected 32 candidates for the interviews and rejected the rest. Among the rejected applications, the Petitioner’s child was included. The ground for the rejection was given as the Petitioner’s child had not obtained necessary marks to be eligible for the interview. As there were 08 vacancies available, the 1st Respondent has selected only 03 candidates and the remaining 05 vacancies were distributed among other categories. The Petitioner argues that, the distribution of remaining vacancies among other categories can be justified only if there are no initially rejected applications and the Petitioner further insists that, it is unfair to distribute the vacancies among other categories, without considering the next-best candidates from the initially rejected applications under the ‘transfer category’.

The Petitioner further illustrates a contradiction as to the act of the 1st Respondent. The initial reason which was given by the 1st Respondent for the rejection of the application of the Petitioner's child was that the latter had not obtained necessary marks to be eligible for the interview but subsequently it was revealed to the Petitioner, that the rejection is not based on the marks but on the qualifications.

The Petitioner's contention is that, the 1st Respondent changed his position later with the reasons unknown to her and was in failure to inform the Petitioner the reasons for disqualification. The Petitioner argues that the conduct of the 1st Respondent is contrary to the provisions of the circular, which lead to an infringement of fundamental rights of her and the child, guaranteed under the Articles 12(1) and 12(2) of the Constitution.

The Petitioner complains against the 2nd and 6th Respondents, who functioned as the members of the Appeal Board. The decision of the appeal board was that 'no marks can be allocated to the Petitioner's child as, the transfer was within 10 kilometres and in such an instance, marks cannot be given under the 'transfer category'. The Petitioner also challenges this decision in this application.

The 1st Respondent's contention in relation to the case is different. As per the view of the 1st Respondent, the Petitioner's transfer is a routine transfer and which does not fall into the 'transfer category'. The 1st Respondent further alleges that, the Petitioner's transfer is an 'assignment' and in accordance with the clause 7.6 of the circular, an assignment shall not be considered as a 'transfer'. The 1st Respondent states that, the type of transfer that the Petitioner was entitled to is a routine transfer, which has been made in the completion of services in one working station, does not represent a 'transfer made in exigencies of service'.

As per the contention of the 1st Respondent, the Petitioner's child was not called for the interview, as the Petitioner had failed to satisfy the eligibility criteria under clause 7.6 under transfer category. He further brings out the clause 12 of the 'Transfer policy for Annual transfers of Grama Niladharies. In this instance, the 1st Respondent's contention is opposite to the averment of the Petitioner. The 1st Respondent emphasizes, that according to the clause 12 of the transfer policy, transfers can be made on exigencies of service outside a particular divisional secretariat division and district.

In the perusal of the facts, it is clear to this court that, the Petitioner has worked in two working stations. The previous working station of the Petitioner was in Mahaladuwa division and the

present one is in Randombe south. As per the information produced by the Petitioner, it is clear that she has resided in several places within the same divisional secretariat.

The clause 7.6. of the circular states as follows,

.....The transfer to be made within a period of 05 years prior to the date of calling for applications
,

It is clear to this court that, the Petitioner's situation is different when compared with the intention of the circular. The relevant clause specifically, deals with the transfers of public servants. It more clearly defines, 'a public servant who comes to a specific area from outside'. It is doubtful whether, the Petitioner can be similarly circumstanced with a public servant who falls under the 'transfer category'.

The intention of the circular is to grant relief to the public servants, who have been transferred on exigency of service to an area situated outside from where he/she permanently resided.

The Petitioner's situation is different here. As the map depicts, her previous address and the current address are within the feeder area of the school. Contrary to the intention of the circular, the Petitioner had resided in the feeder area approximately for 9 years, as her previous and current working places are situated in the same divisional secretariat. The Petitioner has not evacuated an area and came to reside in the feeder area.

Article 12(1), of the Constitution states that, 'similarly circumstanced people should be treated similarly'. The Petitioner is a 'public servant' but is different from a public servant who resides in a feeder area of a school, as a result of a transfer. It is evident to this court that, the Petitioner cannot be similarly circumstanced with a public servant who is entitled to privileges under the 'transfer category' of the circular as the former has not come to the feeder area from outside.

Further, the court has scrutinized the discrepancies appeared on the applications which has been made by the Petitioner to two schools. The Petitioner has provided two different addresses to admit the child to Sri Gunananda Primary School, Balapitiya and Dharmashoka College, Ambalangoda. The permanent address which has been provided by the Petitioner to the former school is 'near Siduhath Viduhala, Balapitiya' which appears on the Birth Certificate of the child. This address was cited as the residence and alleged to be the place where her husband's parents live. Contrarily, the address mentioned in the application made to the latter school is 46/4, R.E. De Silva Mawatha, Heppumulla, Ambalangoda and thereby the Petitioner attempted to emphasize that address as her residence. This is controversial as it is axiomatic that a person

can have two addresses but it is impossible to have two residences. This apparently misleads the authorities.

It is emphasized in 'equity', that one who comes into court must come with clean hands. This implies that a party is not permitted to profit by his own wrong. If any party to the case is guilty of an improper conduct, that guilty party is debarred from relief. It is doubtful to this court whether the Petitioner has complied with the circular, in providing information to the school. It appears to the court that, the Petitioner has provided the two addresses citing two different residences. This is a contravention of the circular which needs the particulars as to the current place the parents reside with the child.

The purpose of 'clean hands doctrine' is predominantly directed to protect the integrity of the court. This amounts to the disapproval of illegal acts and deny the relief for bad conduct. The intention of the court in prioritizing the 'clean hands doctrine' is to discourage the 'improper conduct' as a matter of public policy. The court looks into the matter whether the specific improper conduct is intentional and the doctrine does not punish the carelessness or mistake. It is evident to this court that, being a public servant, the Petitioner is expected to be more responsible and transparent. The conduct of the Petitioner is prima facie misleading, as to the residence.

It is clear to this court that the Petitioner is not entitled to be privileged under the 'transfer category' of the circular No.22/2017 to admit the child to Grade 1 as she is not similarly circumstanced with the public servants who are transferred and reside in the feeder area of the school after evacuating the former area of living.

Further, it is apparent to this court that, the Petitioner has misrepresented the facts as to the residence, and in violation of the 'clean hands doctrine' in equity. This court is obliged to protect the integrity of the court and simultaneously, bound to prevent the 'improper acts' being committed in the matter of public policy.

By considering above circumstances, I am in the view that, the Petitioner had failed to establish that her child's fundamental rights have been violated.

Petition Dismissed.

Judge of the Supreme Court

Buwaneka Aluwihare, PC, J.

I agree

Judge of the Supreme Court

Murdu Fernando, PC, J.

I agree

Judge of the Supreme Court