

**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 and 126 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka

Pradeep Sanjeeva Samarasinghe,  
775S, Vihara Mawatha,  
Narangoda Paluwa,  
Ragama

*- Petitioner-*

S.C.(F.R.) Application No. 361/2009

Vs.

1. The Associated News Papers of  
Ceylon Ltd.,  
Lake House,  
Colombo 01.
2. Bandula Padmakumara,  
The Chairman,
3. Nihal Rathnayake,  
Director Editorial
4. Shan Shanmuganathan,  
Director Finance.
5. Upul Dissanayake,  
Director Operations,
6. Rasanga Harishchandra,  
Director Legal,
7. Rohana Ariyaratna,  
Chief Administrative Officer
8. Abaya Amaradasa,  
The General Manager
9. Gamini Samarasinghe,  
The Editor, Sarasaviya Newspaper

10. Kumudu Goonawardena,  
The Company Secretary  
All are in “The Associated Newspapers of  
Ceylon Ltd.”, Lake House,  
Colombo 1.

11. Hon. Attorney General,  
Attorney General’s Department Hulftsdorp,  
Colombo 12.

- Respondents -

Before : **S. Marsoof, J.**  
**K.Sripavan, J.,**  
**Imam, J.**

Counsel : Upul Jayasooriya for Petitioner.  
M.U.M. Ali Sabry with Samith Fernando for 1<sup>st</sup> to 10<sup>th</sup> Respondents.

Argued on : 11.01.2010

Decided on : 08.06.2010

**SRIPAVAN. J.**

The petitioner who is a journalist in the “Associated Newspapers of Ceylon Ltd.” sought a declaration that his fundamental rights to equality, the equal protection of the Law and the right to form and join a trade union as enshrined in Articles 12(1), 12(2), 14(1)(d) and 14(1)(g) of the Constitution have been violated by the First to Ninth respondents. However, Leave to Proceed was granted on 19.01.09 for the alleged infringement of Article 12(1) of the Constitution.

It is not disputed that at all times material to this application, the petitioner was holding the post of branch Secretary of a Trade Union, namely, "Jathika Sevaka Sangamaya" in the first respondent company. The substantial complaint of the petitioner was that, he was transferred from "Sarasaviya" editorial of the first respondent to "Mihira" editorial with effect from 02.02.2009 and that after two months of the said transfer, the petitioner was again transferred to the Anuradhapura Office of the first respondent by letter dated 08.04.2009 marked **P18** illegally, arbitrarily and in violation of the rules of natural justice. The petitioner in paragraph 25 of the petition claims that the 7<sup>th</sup> respondent has no power or authority to transfer a Secretary or a President of a Workers' Union in as much as such powers are vested in the Secretary to the relevant Ministry, in terms of the Public Administration Circular No. 58/91 dated 12<sup>th</sup> December 1991 issued by the Secretary, Ministry of Public Administration, Provincial Councils and Home Affairs marked **P20**. Thus, the petitioner seeks to set aside the transfer letter marked **P18** issued by the 7<sup>th</sup> respondent.

For purpose of convenience, I shall reproduce the said Circular No. 58/91 issued by R. Abeyratne, Secretary, Ministry of Public Administration, Provincial Councils and Home Affairs.

***Public Administration Circular No. 58/91***

*Ministry of Public Administration,  
Provincial Councils & Home Affairs,  
Independence Square,  
Colombo 7.  
12<sup>th</sup> December, 1991.*

*To: All Secretaries of Ministries  
Secretaries of Provincial Councils  
Heads of Departments  
Government Agents  
Secretaries to Provincial Governors  
Secretaries to Provincial Public  
Service Commissions.*

***Interdiction/Transfers of Presidents and  
Secretaries of Trade Unions***

*If any Public Officer holding the post of President or Secretary of any recognised Trade Union were subjected to interdiction or transfer, that decision should be taken personally by the Secretary to the relevant Ministry..*

2. *You are requested to bring this to the notice of all officers.*

*Sgd. R. Abeyratne  
Secretary,  
Ministry of Public Administration,  
Provincial Councils & Home Affairs,*

It is evident from the said Circular, that it applies only to a “Public Officer” holding a post of President or Secretary of any recognized Trade Union. The Constitution in Article 170 defines “Public Office” as follows:

“Public Officer” means a person who holds any paid office under the Republic other than a judicial officer but does not include –

- (a) the President;
- (b) the Speaker;
- (c) a Minister;
- (ca) a member of the Constitutional Council,
- (cb) a member of the Election Commission,
- (cc) a member of the National Police Commission,
- (cd) the Commissioner General of Elections,
- (ce) Officers appointed to the Election Commission by the Election Commission.
- (d) a member of the Judicial Service Commission;
- (e) a Member of the Public Service Commission,
- (f) a Deputy Minister;
- (g) a Member of Parliament;
- (h) the Secretary-General of Parliament;
- (i) a member of the President’s staff;

- (j) a member of the Public Service Commission;
- (k) a member of the staff of the Secretary-General of Parliament.

The appointment, promotion, transfer, dismissal and disciplinary control of “Public Officers” are vested in the Public Service Commission, in terms of Article 55 of the Constitution. No material was placed before Court to establish that the petitioner was appointed as a journalist by the Public Service Commission. On the contrary, the first respondent is a Company in which the Public Trustee holds the majority of the shares. Section 2 of The Associated Newspapers of Ceylon Ltd. (Special Provisions) Law, No. 28 of 1973 reads thus :

*“The following provisions shall, on the appointed date, apply in respect of the company which was, on the day immediately prior to that date, carrying on business under the name of The Associated Newspapers of Ceylon, Limited :*

- (a) Such company, hereinafter in this Law referred to as “the company”, shall be, for the purposes of the Companies Ordinance, a company other than a private company within the meaning of that Ordinance.*
- (b) Not less than seventy-five per centum of the total number of all the shares of the company shall vest in the Public Trustee on behalf of the Government, and the company shall register the Public Trustee, under the title “The Public Trustee on behalf of the Government of Sri Lanka”, as the holder of such shares of the company, and shall issue the necessary share certificates to the Public Trustee under that title.*
- (c) From and after the appointed date, persons who were shareholders of the company in terms of the Annual Return in Companies Form 63 made up to the fourth day of January, 1972, and tendered to the Registrar of Companies, shall not be entitled to more than twenty-five per centum of the total number of shares to the company:*

*Provided that no individual shareholder shall hold more than two per centum of the total number of shares of the company as on the fourth day of January, 1972.*

- (d) In accordance with the preceding provisions of the section, the persons whose names and addresses are specified in the entries in Column 1 of the Schedule to this Law, being persons who were shareholders of the company in terms of the Annual Return in Companies Form 63 made up to the fourth day of January, 1972, and tendered to the Registrar of Companies, may hold shares in the company in such number as are specified in the corresponding entries in Column II of that Schedule.*
- (e) The balance shares of the company shall vest in the Public Trustee on behalf of the Government in terms of the provisions of paragraph (b).*
- (f) The memorandum and articles of association of the company shall, with effect from the appointed date, cease to be in force.*
- (g) The new memorandum and articles of association of the company shall be as prescribed.*
- (h) .Any transfer of the ownership of shares in the company made on or after the fourth day of January, 1972, shall be void.”*

The documents marked **P2 & P3** dated 16.06.95 and 16.01.2002 respectively indicate that the petitioner's appointment and promotions were made by the Chief Administration Officer of the first respondent Company. Hence, the petitioner is not a "Public Officer" and does not hold any paid office under the "Republic". Thus, I have no hesitation in concluding that the petitioner is not a "Public Officer" within the meaning of the Public Administration Circular No. 58/91. Therefore, the said Public Administration Circular No. 58/91 has no application to the petitioner. Hence, I hold that the petitioner's fundamental right guaranteed by Article 12(1) of the Constitution has not been violated, by the first to ninth respondents.

The petitioner in paragraph 21 of the petition states that the Company Secretary of the first respondent Company on 17.03.2008 directed the petitioner to forward an explanation as to why disciplinary action should not be taken against the petitioner for the violation of the notice dated 6<sup>th</sup> January 2006. Having averred in paragraph 22 of the petition that the petitioner or the Trade Union he represents have not received any such notice dated 06.01.2006, the petitioner in paragraph (f) of the prayer to the petition seeks to quash the

notice dated 06.01.2006 marked **P19(5)** issued by the Secretary to the first respondent Company.

If the petitioner's fundamental right has been violated by the direction issued on 17.03.2008 for not complying with the notice dated 6<sup>th</sup> January 2006, the petitioner should have applied to this Court within one month from 17.03.2008 as provided in Article 126 (2) of the Constitution. The present application was filed on 06.05.2009. Having slept over his right for more than one year the petitioner cannot now be heard to complain of a direction dated 17.03.2008. I do not see any merit in the petitioner's application. The application is therefore dismissed, in all the circumstances without costs.

JUDGE OF THE SUPREME COURT

**S. MARSOOF, J.**

I agree.

JUDGE OF THE SUPREME COURT

**IMAM, J.**

I agree.

JUDGE OF THE SUPREME COURT