

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

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

Keliduwa Madduama Liyanage Janaka Priya,
“Shanthi”, Galagama North,
Nakulugamuwa, Beliaththa.

Petitioner

SC FR 298/2021

Vs,

1. Mr. C.D. Wickramaratne,
Inspector General of Police,
Police Headquarters, Colombo 01.
2. Hon Mohan Priyadarshana De Silva,
Member of Parliament,
Near the Railway Station Dodanduwa (80250).
3. Hon. Rear Admiral Dr. Sarath Weerasekara,
Minister of Public Security,
4th Floor, “Suhurupaya”, Battaramulla.
- 3A. Hon. Tiran Alles,
Minister of Public Security,
4th Floor, “Suhurupaya”, Battaramulla.
4. Major General (Retired) Jagath Alwis,
Secretary to the Ministry of Public Secretary,
14th Floor, “Suhurupaya”, Battaramulla.
- 4A. Mr. S. Hettiarachchi,
Secretary to the Ministry of Public Security,
14th Floor, “Suhurupaya”, Battaramulla.
5. Hon. Justice Jagath Balapatabendi,
Chairman, Public Service Commission.
6. Mrs. Indrani Sugathadasa,
Member, Public Service Commission.

7. Mr. Sundaram Arumainayagam,
Member, Public Service Commission.
8. Dr. T.R.C. Ruberu,
Member, Public Service Commission.
9. Mr. Ahamod Lebbe Mohomed Saleem,
Member, Public Service Commission.
10. Mr. Leedasena Liyanagama,
Member, Public Service Commission.
11. Mr. Dian Gomes,
Member, Public Service Commission.
12. Mr. Dilith Jayaweera,
Member, Public Service Commission.
13. Mr. W.H. Piyadasa,
Member, Public Service Commission.
14. Mr. M.A.B. Daya Senarath,
Member, Public Service Commission.

The 05th to 14th Respondents are at;

Public Service Commission,
No. 1200/9, Rajamalwatta Road, Battaramulla.

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

Respondents

Before:

Justice Vijith K. Malalgoda PC
Justice Mahinda Samayawardhena
Justice Arjuna Obeyesekere

Counsel: Darshana Kuruppu with Buddhika Thilakarathna, Sudarsha de Silva, and Sahan Weerasinghe for the Petitioner,

Ms. Ganga Wakishta Arachchi, DSG, for the 1st, 3rd, 4A, 5th, to 14th and 15th Respondents

Argued on: 16. 06.2023

Decided on: 14.12.2023

Vijith K. Malalgoda PC J

Petitioner to the instant application Chief Inspector of Police Keliduwa Madduma Liyanage Janaka Priya who was the Officer-in-Charge of Police Station Thelikada in Elpitiya Police Division had come before this Court alleging the violation of his fundamental right guaranteed under Article 12 (1) of the Constitution by transferring him with immediate effect from Thelikada Police Station to Tangalle Police Division for normal duties on the ground of exigencies of service, without following the proper procedure in transferring an Officer-in-Charge of a Police Station.

This Court on 25.07.2022 granted leave to proceed for the alleged violation of Article 12 (1) of the Constitution and at the time the matter was supported before this Court, the learned DSG who represented the Respondents informed the Court that the Respondents will be raising a preliminary objection for the maintainability of the application since the application had been filed out of time.

As revealed before us the Petitioner who joined the Sri Lanka Police Department on 09.03.1993 as a Reserve Sub Inspector was absorbed into the Police Regular Service as a Sub Inspector of Police with effect from 24.02.2006 and was promoted to the rank of Inspector of Police with effect from 25.09.2007. He was subsequently promoted to the rank of Chief Inspector of Police with effect from 01.01.2020. When the Petitioner was holding the rank of the Inspector of Police, on 03.06.2015 he was appointed as the Officer in Charge of the Police Station Uva Paranagama in the Bandarawela Police Division and was transferred to Thelikada Police Station in the Elpitiya Police Division on 15.03.2019.

Objection of Time Bar

The instant application was filed at the registry on the 30th September 2021 alleging that the Petitioner was subject to discriminatory and/or unreasonable and/or arbitrary transfer with immediate effect, communicated to him by Telephone Message. (TTM 115, CTTM 133 dated 09.08.2021)

As per the provisions in Article 126 (2) of the Constitution any person who alleged that his fundamental right had been violated by executive or administrative action, may apply within one month thereof to the Supreme Court.

The strict application of the above provision required the Petitioner to come before this Court within one month from 09.08.2021.

However, whilst explaining his delay in invoking the fundamental rights jurisdiction before the Supreme Court, the Petitioner had submitted that he could not file the instant application any earlier than he did due to the Island-wide quarantine curfew imposed on 20th August 2021 and therefore the Petitioner did not have the access to his lawyer in order to obtain legal advice.

It is common ground that the country was under a lockdown period due to the COVID-19 pandemic which prevented the public from engaging in day-to-day activities. The Supreme on two occasions issued Temporary Rules under Article 136 of the Constitution to grant relief to litigants who faced difficulties due to the lockdown imposed in the Country. The first set of Rules namely Supreme Court (Temporary Provisions) Rules 2020 were published in the Government Gazette Extraordinary No 2174/4 dated 6th May 2020 covering a period between 16th March 2020 to 18th May 2020.

A similar rule was published in the Government Gazette Extraordinary No. 2211/56 dated 21st January 2021 covering the period 24th October 2020 to 31st January 2021.

However, the rules promulgated above were only applicable to the timeline (of sixty days) identified in rule 7 of the Supreme Court Rules 1990.

Since the rule referred to above had a limited application, a piece of legislation was introduced to address the difficulties faced by the litigants who faced the same difficulty with regard to cases that

were not covered by the rules promulgated by the Supreme Court under Article 136 of the Constitution.

An Act titled Corona Vires Decease 2019 (COVID-19) (Temporary Provisions) Act No. 17 of 2021 was introduced with effect from 1st March 2020 for a period of two years and the purpose of introducing the said legislation was identified in the long title to the said Act as follows;

“AN ACT TO MAKE TEMPORARY PROVISIONS IN RELATION TO SITUATIONS WHERE PERSONS WERE UNABLE TO PERFORM CERTAIN ACTIONS REQUIRED BY LAW TO BE PERFORMED WITHIN THE PRESCRIBED TIME PERIODS DUE TO COVID - 19 CIRCUMSTANCES; TO ASSIGN ALTERNATIVE COURTS WHERE A COURT CANNOT FUNCTION DUE TO COVID - 19 CIRCUMSTANCES; TO CONDUCT COURT PROCEEDINGS USING REMOTE COMMUNICATION TECHNOLOGY TO FACILITATE THE CONTROL OF CORONA VIRUS DISEASE 2019 (COVID - 19); AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.”

Section 2 (1) of the said Act has identified the areas that will be covered by the Act as follows;

2. (1) Where any court, tribunal, or any other authority established by or under any law is satisfied that, a person was prevented from-
 - a) Instituting or filing any action, application, appeal, or other legal proceeding, as the case may be, within the period prescribed by law for such purpose; or
 - b) Performing any act which is required by law to be done or performed within a prescribed time period,

due to any COVID-19 circumstance, it shall be competent for such court, tribunal, or any other authority established by or under any law to allow, admit or entertain an action, application, appeal, other proceedings, or act, referred to in paragraph (a) or (b), notwithstanding the lapse of the time period prescribed by law for such purpose and subject to the provisions of section 9, the period within which such person was subject to such COVID -19 circumstance shall be excluded in calculating the said prescribed time period.

However, as per the provisions in section 2 (2), the relief granted under subsection (1) shall not apply to similar reliefs granted by rules promulgated by the Supreme Court under Article 136 including the rules referred to above.

In the said circumstances it is clear that the provision in the Corona Vires Decease 2019 (COVID-19) (Temporary Provisions) Act No 17 of 2021 is applicable to an application filed before this Court under Article 126 (2).

Under Section 6 of the said Act the burden of proof that the inability to comply with the prescribed time periods for the purpose of Section 2 is due to any COVID-19 circumstance, shall be on the party making the application for relief under such Section and in Section 8 “COVID-19 circumstance” is interpreted as,

- a) COVID-19
- b) Any other circumstance arising out of or consequential to the circumstances referred to in paragraph (a)

Section 5 restricts the relief period granted under Section 2 to a period not exceeding twelve months.

The Petitioner when invoking the jurisdiction of this Court had explained the delay in coming before this Court as the imposition of Island wide quarantine curfew imposed on 20th August 2021. When the Respondents raised a time bar objection among the objections filed before this Court, the Petitioner had filed papers to establish his position by way of counter objections, and according to the counter objections, the Petitioner logged his out entry on 11.08.2021 and thereafter from 14.08.2021-03.09.2021 underwent home quarantine for a period of 21 days as he was identified as a person exposed to a COVID-19 patient. He has also produced marked X1 the quarantine certificate issued by the Public Health Inspector countersigned by the MOH Beliatta.

The Petitioner has also produced press releases issued by the President’s Office extending the quarantine curfew until 13th September, 21st September, and finally until 1st of October. The Petitioner had invoked the jurisdiction of this Court on 30th September one day prior to the lifting of the quarantine curfew.

In the case of ***Gamaethige V. Siriwardana (1998) 1 Sri LR 384 at 402***, Mark Fernando J considering the time bar objection had observed the following;

*“While the time limit is mandatory, in exceptional cases, on the application of the principle *lex non cogit ad impossibilia*, if there is no lapse, fault or, delay on the part of the Petitioner, this Court has a discretion to entertain an application made out of time.”*

When considering the material submitted by the Petitioner in the determination of the preliminary objections raised on behalf of the Respondents, I am satisfied with the explanation provided by the Petitioner in explaining the delay and therefore overrule the preliminary objection.

Whilst the Petitioner was serving as the Officer in Charge of the Police Station Thelikada, on 01.01.2020 was promoted to the rank of Chief Inspector of Police. As the Officer in Charge of Police Station Thelikada, the Petitioner along with his subordinate officers conducted several raids and apprehended several suspects for their involvement in unregulated sand mining and Timber Trafficking which were carried out in the Thelikada Police area at a large scale with the blessings of some local politicians for a long period of time.

Even though the Petitioner had taken up the above position and submitted that, due to his impartial conduct in carrying out raids and apprehending suspects, he was not popular among the Criminals and their "Masters" and created enemies who decided to get rid of him from Thelikada Police Station, but failed to submit material to justify his position before this Court. When explaining the above the Petitioner has taken up the position that, his sudden transfer from Thelikada Police Station has prevented him from obtaining the necessary material to place before the Supreme Court.

As further submitted by the Petitioner, while he was serving as Officer in Charge of Police Station Thelikada, he got to know that, an anonymous Petition had been received by his superior officers and an inquiry was conducted on the directives of the 1st Respondent, by a team of Police Officers headed by an Assistant Superintendent of Police of the Special Investigations Unit, and a statement was recorded from the Petitioner.

The Petitioner had reliable information that he was exonerated from the charges leveled against him in the anonymous petition, by the Special Investigations Unit, but to his surprise, he received a Police Message dated 09.08.2021 (TTM 155 and CTTM 139) informing him that he had been transferred to Tangalle Police Division for normal duties on the ground of exigencies of service. (P-4) Somewhere around March 2021 (five months prior to his transfer) the Petitioner received a letter through post by an anonymous sender said to have been signed by the 2nd Respondent who is a State Minister and a Member of Parliament from the Galle District requesting the 3rd Respondent to appoint one S.M.C.L. Silva an Inspector of Police who was serving at that time at Elpitiya Police Station to the Post of Officer in Charge of Police Station Thelikada, even though there was no vacancy for the above post at that time (a copy of the letter dated 28.03.2021 was produced marked P-3)

On behalf of the Petitioner, it was argued that the transfer order he was served based on exigencies of service, was a cover-up to transfer him out of Thelikada Police Station and to appoint a close associate of the Political leadership as OIC Thelikada Police Station. The Petitioner who was a Chief Inspector of Police and an Officer in Charge of a Station was transferred for normal duties (not to an Officer in Charge Position) was not a transfer on exigencies of service but in fact a demotion for him. At the time the Petitioner came before this Court, the Petitioner was attached to Kataragama Police Station for normal duties by Senior Superintendent of Police Tangalle.

On behalf of the Petitioner, it was further argued that as per the Government Gazette (Extra-ordinary) No 2202/24 dated 20th November 2020, the powers of the Public Service Commission to appoint and transfer the Officer in Charge of Police Stations had been delegated to the Inspector General of Police, and the Inspector General of Police is expected to appoint and transfer the Officer in Charge of Police Stations as per the scheme approved by the Public Service Commission.

However, in the absence of a scheme approved by the Public Service Commission, the transfer of Officer in Charge of Police Stations was to be implemented in terms of the provisions set out in rules 218-223 of the Procedural Rules of the Public Service Commission.

As observed by us clause 196 of the Procedural Rules identified the methods of transfer of Public Officer as follows;

196. Transfers are four-fold 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

Clauses 218 onwards up to clause 221 provided for the transfers made on exigencies of service as follows;

218. A Public Officer may be transferred on exigencies of service by the Appointing Authority for any one of the following reasons.
 - i. Where the service 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
219. Before a Public Officer is transferred on exigencies of service, the Authority with Delegated Power shall personally satisfy himself that the need has actually arisen as specified in Section 218 above and that the transfer cannot be deferred till the next annual transfers.
220. Depending on the nature of the need for services that has arisen, the Appointing Authority may transfer an officer at short notice.
221. The Appointing Authority shall record in the relevant file clearly all the factors that caused the transfer of an officer on exigencies of service. The Appointing Authority shall convey the reasons to the officer concerned.

In the transfer order that was communicated to the Petitioner by TTM-155 and CTTM-139, it is stated that,

“මහජන ආරක්ෂක අමාත්‍යාංශයේ ලේකම්ගේ 2021.08.06 දිනැති අංක 02/08/OIC/02/2021 දරණ ලිපියේ සඳහන් අනුමැතිය පරිදි පහත සඳහන් ස්ථාන මාරු කිරීම සේවයේ අවශ්‍යතාවය මත වහාම ක්‍රියාත්මක වන පරිදි නියෝග කරමි.

01. ප්‍ර.පො.ප. කේ.එම්.එල්. ජනකප්‍රිය තෙලිකඩ පොලිස් ස්ථානාධිපති තනතුරේ සිට සාමාන්‍ය රාජකාරි සඳහා තංගල්ල කොට්ඨාශය වෙත

From the material placed before this court by the Petitioner, it is revealed that,

- a) The Petitioner was promoted to the rank of Chief Inspector with effect from 01.01.2020
- b) There were no pending disciplinary matters except for the investigation carried out by the Special Investigation Unit regarding an anonymous Petition received against the Petitioner

On behalf of the Respondents, the 1st Respondent Inspector General of Police had filed objections by way of an affidavit, and in the said affidavit, the 1st Respondent had taken up the position that,

- a) The transfer of the Petitioner was made in accordance with the law, having duly considered the facts and circumstances that prevailed at Thelikada Police area which is supported by several reports received by him including, an intelligence report which produced marked 1R1, report by the Superintendent of Police Elpitiya marked 1R2, Report of the Deputy Inspector General of Police Galle marked 1R3 and the Report of the Senior Deputy Inspector General of Southern Province marked 1R4.
- b) The investigation carried out by the Special Investigation Unit was based only on one anonymous petition received against the Petitioner but in the reports referred to above, several allegations were leveled against the Petitioner mainly based on the intelligence report received against him.
- c) The transfer of the Petitioner was not motivated due to the influence of the political leadership of the area and in fact, after the transfer of the Petitioner from Thelikada Police Station, Chief Inspector of Police Weerakonda Arachchige Shihan Dilanka was appointed as the Officer in Charge of Thelikada Police Station with effect from 27.08.2021 and IP S.M.C.L. Silva has only acted as Officer in Charge of Thelikada Police Station for a brief period of two weeks until the post was filled permanently.

As observed by this Court, the 1st Respondent when justifying his decision to transfer the Petitioner, had heavily relied on the four Reports produced marked 1R1-1R4, but as further observed by this Court, no steps were taken against the Petitioner with regard to the allegations referred to in those reports.

In 1R1, the Report of the Intelligence Unit Galle dated 20.09.2020, there is a reference to making false entries with regard to the use of the official vehicle assigned to the Police Station with the help of the Police Driver Sanjeewa, misusing the money allocated for fuel, having a close relationship with the people who involved in illegal sand mining, Neglecting duties by not visiting the Police Station, associating a set of favourite officers and with the help of one retired sergeant, collecting money from people involved in illegal activities.

It appears that the above allegations are very serious in nature, which can be leveled against an Officer in Charge of a Police Station, and therefore there is a duty cast upon the Respondents to place before the Court the steps that were taken against the Petitioner with regard to the allegation in 1R1. In

addition to the above, in the Report produced marked 1R2 prepared by the Superintendent of Police Elpitiya dated 06.09.2020 addressed to DIG Galle, there is a reference to the arrest of some suspects for operating a brothel and for possession of 3170 mg. of Heroin in the Police area of Thelikada on information received by the Senior DIG Southern Province through an informant, by a police party led by IP Thuduwege of Elpitiya District Crime Detective Unit and had taken up the position that the above detection would establish that the Petitioners had failed in his duties as OIC Thelikada. In addition to the above, there is a reference to an illicit affair of the Petitioner with a WPC and an investigation carried out by ASP II – Elpitiya with regard to a petition received against the Petitioner.

1R3 and 1R4 are two Reports one by the Deputy Inspector General of Police Galle addressed to the Senior Deputy Inspector General of Police Southern Province and the other by the Senior Deputy Inspector General of Police Southern Province addressed to the Inspector General of Police. 1R3 was received by the Senior Deputy Inspector General of Police on 07.10.2020 and 1R4 was received by the Inspector General of Police on 15.10.2020. Both reports were based on 1R1 and 1R2, produced by their subordinate officers but the allegation of having an illicit affair with a WPC was explained in detail in those two reports.

However, in both reports referred to above, i.e., 1R3 and 1R4 prepared by the Deputy Inspector General of Police Galle and the Senior Deputy Inspector General of Police Southern Province there is no reference to any disciplinary step taken against or pending against the Petitioner. As revealed before this Court during the argument, the authors of 1R3 and 1R4 had not even directed to record a statement and/or call for his explanation from the Petitioner with regard to the allegations leveled against him in those reports. Even though there is a reference to an investigation carried out by Assistant Superintendent of Police II Elpitiya with regard to a petition, no such material was placed before this Court to establish the allegations against the Petitioner.

As observed by this Court the 1st Respondent who received 1R4 on 15th October 2020, on 25th July 2021, nine months after the receipt of 1R4, based on the allegations against the Petitioner found in 1R4, had recommended to the Secretary to the Ministry of Public Security, Law and Order to transfer the Petitioner to Tangalle Division for normal duties. (1R6)

In the said recommendation, 1st Respondent had first requested to cancel his previous recommendation dated 18.06.2021 to transfer the Officer in Charge Rathgama Police Station to Anuradhapura Division for normal duties and to transfer OIC Achchuweli to Rathgama Police Station,

and had referred to the conduct of the Petitioner as revealed in the reports he received in October 2020 including the allegation of an illicit affair with WPC (කා.පො.සැ. සමඟ ප්‍රසිද්ධියේ අනියම් සම්බන්ධතාවයක් පවත්වන බවත්....) and recommend to transfer him out of Thelikada Police Station to Tangalle Division for normal duties and to replace him with OIC Achchuweli.

Acting on the said recommendation the 4th Respondent, Secretary to the Ministry of Public Security, Law and Order had transferred the Petitioner as recommended but no order was made to implement the second recommendation to replace him with OIC Achchuweli but made an order to direct the Senior Deputy Inspector General of the area to appoint a suitable officer to cover up duties (1R7) and the said directive was communicated to the relevant officer by the 1st Respondent by TTM155. (1R8)

It is on this directive only the Petitioner was transferred to Tangalle Division with immediate effect and on an acting basis he was replaced by Inspector of Police S.M.C.L. Silva.

As against the transfer order, the Petitioner appealed to the Public Service Commission, and as submitted by the Petitioner as well as the 1st Respondent, the said appeal was rejected by the Public Service Commission (1R12).

The observations forwarded to the 4th Respondent by the 1st Respondent and the observations of the 4th Respondent sent to the Public Service Commission with regard to the said appeal were produced before this Court by the 1st Respondent marked 1R9 and 1R10 respectively and the reason for his transfer was explained in those observations as follows;

1R9 “නිලධාරියා සම්බන්ධයෙන් බස්නාහිර පළාත භාර ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පතිවරයා සහ බුද්ධි අංශ විසින් පහත කරුණු වාර්තා කර තිබීම හේතුවෙන් ඔබගේ අනුමැතිය පරිදි 2021.08.09 තෙලිකඩ පොලිස් ස්ථානාධිපති තනතුරින් ඉවත් කර ස්ථාන මාරු කර ඇත.

ජ්‍යෙෂ්ඨ නියෝජ්‍ය පොලිස්පතිවරයාගේ වාර්තාවේ සඳහන් කරුණු සැකවිත්;

- කා.පො.සැ..... නිලධාරියා සමඟ ප්‍රසිද්ධියේම අනියම් සම්බන්ධතාවයක් පවත්වන බවත් පො.කා.රි. නිලධාරියාගේ සහය ඇතිව ලැගුම්හල් සඳහා මෙම නිලධාරියා ගෙන යාමට කටයුතු කරන බව
- 2021.08.14 දින නිලධාරියා ස්ථානයට පැමිණ විවේකය වාර්තා කර නොමැති බවත් ස්ථානාධිපතිවරයා විසින් දෛනික තොරතුරු පොත රැගෙන ගොස් උක්ත කාන්තා පොලිස් සැරයන් වරිය ලෙසට පෙනී සිට ස්ථානාධිපතිගේ අත් අකුරින් ඒදින පැය 22.00 ට විවේකය වාර්තා කර අසත්‍ය සටහන් යොදා ඇති බව

- මේ සම්බන්ධයෙන් පොලිස් විශේෂ විමර්ශන ඒකකය මඟින් විමර්ශනයක් ආරම්භකර ඇති බව”

1R10 “4 ඒ අනුව අයහපත් වාර්තා සලකා තෙලිකඩ හිටපු පොලිස් ස්ථානාධිපති ස්ථාන මාරු කිරීම සිදුකර ඇති බව දන්වමින් අවශ්‍ය කටයුතු සඳහා කාරුණිකව ඉදිරිපත් කරමි.”

Even though no disciplinary action was commenced or recommended by the 1st Respondent except for the investigation carried out by the Special Investigations Unit on the directives of the 1st Respondent on one anonymous petition received against the Petitioner, the 1st Respondent had maintained the position that the transfer of the Petitioner was recommended under Clause 218 (iii) of the procedural rules of the Public Service Commission.

The objections filed before this Court by the 1st Respondent were challenged by the Petitioner and in the counter objections filed, the Petitioner had relied on four documents marked X-1 to X-4. The documents produced X-3 and X-4 refer to the investigation carried out by the Special Investigation Unit with regard to the petitioner and X-3 is a letter dated 20.05.2021 bearing No. PHQ/ED/05/07/522-2021 addressed to the Director Special Investigation Unit by the 1st Respondent and the said letter refers to the following;

“That, the 1st Respondent by letter dated 07.09.2020 bearing No. Staff/03/IGP/OUT/05/4632/2020 advised the Director Special Investigation Unit to conduct an inquiry into an anonymous petition received by him regarding allegations of acts of misconduct of the Petitioner

That, the said investigation had been conducted by the said unit, and the final report was forwarded to the 1st Respondent on 22.04.2021 bearing No. D/SIU/OW/533/2021. The Report and the entire investigation file had been forwarded to Director Disciplinary and conduct and report had been called by him.

That, according to the report received from the Director, of Disciplinary and Conduct the allegations made against the Petitioner were not proved. However, it was recommended that WPC.... had been found guilty of dereliction of duty, for failing to enter her off duty, on 14.08.2020 in the daily information book, and enter the same on 15.08.2020 below the entry made by the Officer in Charge of Night Duty.”

and Directed the Director of the Special Investigation Unit to communicate the disciplinary recommendation with regard to WPC and to report the progress.

In response to the above direction, the Director Special Investigation Unit sent X-4 dated 01.06.2021 to the Senior Superintendent of Police Elpitiya directing him to take disciplinary action against WPC. Police Station Thelikada and to report.

As observed by this Court, the 1st Respondent is silent on these two letters. Even during the arguments before us, X-3 and X-4 were never rejected or challenged on behalf of the 1st Respondent. It is observed that the said letters are neither copied to the Petitioners nor sent to the personal file of the Petitioner. They are internal communications in the Police Department and the Petitioner has failed to explain to this Court, how he received these documents. However, in the absence of any challenge to X3 and X4 on behalf of the 1st Respondent, this Court will only take into consideration that by May 2021 a decision has been taken

- a) To exonerate the Petitioner of the allegation leveled against him in the petition that was investigated by the Special Investigation Unit
- b) To charge sheet WPC.... for her conduct with regard to the allegation of leaving the Police Station without making an official entry in the relevant register.

However as already referred to by me in this judgment the 1st Respondent's recommendation to transfer the Petitioner was mainly based on the allegation with regard to his alleged involvement with the WPC, in the recommendation sent to the Secretary to the Ministry of Public Security Law and Order on 25th July 2021 approximately two months after a decision was taken that the material is insufficient to establish charges against the Petitioner.

When the Petitioner appealed to the Public Service Commission against his transfer order, the 1st Respondent submitted his observation (1R9) dated 10th January 2022 mainly on three issues

- a) That the petitioner was having an illicit affair openly with WPC
- b) That on 14.08.2020 WPC had left the Police Station without reporting her off duty and the Petitioner had made a false out entry in his handwriting to help the WPC

- c) That there is an inquiry pending against the petitioner with regard to the above incident by the Special Investigations Unit, when in fact the inquiry is concluded and the decision had already being communicated by that time.

When making his recommendation to transfer the Petitioner out of Thelikada Police Station (1R-6), the 1st Respondent failed to ascertain the correct position with regard to the inquiry pending against the Petitioner and totally depended on the reports he received from the Senior Deputy Inspector General of Police Southern Province eight months before.

It is also observed by this Court that there was an attempt to oust the Petitioner from Thelikada Police Station by the Higher Ranks of the Southern Police Division to please the political leadership, and when transfer order was received to replace Officer in Charge Thelikada with a suitable officer to act, Inspector of Police SMCL Silva who was recommended to the above post (P-3) by the 2nd Respondent was appointed to act as the Officer in Charge of Thelikada Police Station.

In the case of ***Range Bandara Vs. General Anuruddha Ratwatte and another (1997) 3 Sri LR 360 Mark Fernando J*** having observed the following;

“The 2nd Respondent stated that it was a continuation of the end-of-the-year transfer from 1995 and that 68 officers were transferred at the same time. Although he did not make any reference to the ‘exigencies of service,’ the 1st Respondent claim that the 2nd Respondent had told him it was on account of the exigencies of service.....”

As for alleged complaints after October 1994, since the 2nd Respondent did not refer to any reports relating to such complaints, it is quite unsafe to act on the 2nd Respondent’s bare assertion that he was ‘made aware’ of complaints, particularly because these were not disclosed to the Petitioner so that he could have been heard in his defence.....

But there is a more serious objection to allowing that material to be tendered. Not having given the Petitioner even an inkling that his transfer was on account of such complaints, and had pretended that the transfer was a normal annual transfer-with 68 other transfers- can the 2nd Respondent now be allowed to say that it was on disciplinary grounds, ‘so that proper inquiries could be conducted’, in respect of the complaints against him? All the complaints referred to in the October 1994 reports were not proceeded with, either

because they were withdrawn or because there was insufficient evidence. Even if there were subsequent complaints (i.e., between October 1994 and December 1995) why was no action taken in 1995?”

had held that;

“In my view, the summary transfer of the Petitioner to a distant place was unreasonable, on the material available to the 2nd Respondent, and it was also a misuse of discretion to withhold from him, the true reason for the transfer because it deprived him of the opportunity to rebut it. I hold that the 2nd Respondent’s decision to transfer the Petitioner was arbitrary, capricious, and unreasonable, and in violation of the Petitioner’s fundamental right, under Article 12 (1).”
(Emphasis added)

The petitioner was transferred from Thelikada Police Station on, the ground of exigencies of service, but the 1st Respondent was silent on the relevant provision of Clause 218 of the Procedural Rule he acted upon when making the recommendation.

As already observed in this order, the 1st Respondent when making his recommendation had heavily relied on the alleged illicit affair of the Petitioner but also referred to the misuse of the official vehicle and fuel allocated to the Police Station and having a close relationship with criminals of the area but in the absence of any pending investigation or inquiry based on these allegations the Petitioner is totally unaware of the reasons for his transfer except the fact that he is being transferred on exigencies of service.

Clause 218 refers to three different criteria a transfer could be implemented on exigencies of service. The Petitioner who faced the transfer on exigencies of service was deprived of properly defending himself without knowing the real reason for his transfer, when compared to a transfer made on disciplinary grounds, where the officer is well aware of the reason for his transfer. The person who is transferred on exigencies of service should have been informed of the reasons behind his transfer. If the Petitioner was informed of the reasons for his transfer he could have properly defended himself before the Public Service Commission when he submitted the appeal and the 1st Respondent would not have been able to mislead the Public Service Commission.

The allegation that the 2nd Respondent was involved in the transfer of the Petitioner was not established before this Court except for the fact that he wanted a particular officer to be appointed

as the Officer in Charge of Thelikada Police Station. The material that was placed against the 4th Respondent that he had arbitrarily and/or unreasonably approved an *ad hoc* transfer of the Petitioner was not established since the 4th Respondent was acting on the recommendations of the 1st Respondent but the 4th Respondent was reluctant to implement the full recommendation made by the 1st Respondent.

When considering the material already discussed in this judgment it is clear that the conduct of the 1st Respondent in recommending the transfer of the Petitioner on exigency of service is in violation of the fundamental rights of the Petitioner guaranteed under Article 12(1) of the Constitution. The Petitioner was not successful in establishing any violation of his fundamental rights by the other Respondents.

For the reasons given in this judgment, I hold that the 1st Respondent has violated the Fundamental Rights of the Petitioner guaranteed under Article 12(1) of the Constitution by transferring the Petitioner from Thelikada Police Station.

Since the Petitioner is presently serving as an Officer in Charge of a Police Station, this court will not make any order to have him back at Thelikada Police Station.

Application allowed.

Judge of the Supreme Court

Justice Mahinda Samayawardhena,

I agree,

Judge of the Supreme Court

Justice Arjuna Obeyesekere,

I agree,

Judge of the Supreme Court