

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

In the matter of an application for
Leave to Proceed in terms of Article
126 read with Article 17 of the
Constitution

K. B. D. Ajith Priyantha Jayasundara,
No. 15/5, Jayagath Road, Navinna,
Maharagama.

Petitioner

S.C. (FR) Application No. 33/2013

Vs.

1. H. T. Kamal Pathmasiri,
District Secretary,
Colombo District Secretariat,
Dam Street, Colombo 12.
- 1a. Sunil Kannangara,
District Secretary,
Colombo District Secretariat,
Dam Street, Colombo 12.
- 1b. Pradeep Yasarathne,
The District Secretary,
'Nil Medura' (Official Residence),
Colombo District Secretariat,
Elvitigala Mawatha, Narahenpita.
2. Jagath Chandrasiri,
Additional Secretary (Graduate
Training Programme),
Ministry of Public Administration,
Independence Square,
Colombo 07.

- 2a. K. V. P. M. Gamage,
Additional Secretary (Graduate
Training Programme),
Ministry of Public Administration,
Independence Square,
Colombo 07.
- 2b. K. G. R. Wimasooriya,
(Graduate Training Programme),
Ministry of Public Administration,
Independence Square,
Colombo 07.
- 2c. The Commissioner General of
Consolidated Services,
Ministry of Public Administration
and Management Services,
Independence Square,
Colombo 07.
- 2d. The Secretary,
Ministry of Public Administration
and Management Services,
Independence Square,
Colombo 07.
- 2e. J. J. Rathnasiri,
The Secretary,
Ministry of Public Administration
and Management Services,
Independence Square,
Colombo 07.
3. U. W. Senaratne,
Divisional Secretary,
Kolonnawa Divisional Secretariat,
Kolonnawa.

- 3a. Amitha Dodanwala,
Present Divisional Secretary,
Kolonnawa Divisional Secretariat,
Kolonnawa.
- 3b. M. A. P. Jayakody,
Divisional Secretary,
Kolonnawa Divisional Secretariat,
Kolonnawa.
4. Buddi Tharanga Karunasena,
Divisional Secretary,
Maharagama Divisional Secretariat,
Maharagama.
- 4a. M. M. K. Dilrukshi Walpola,
Divisional Secretary,
Maharagama Divisional Secretariat,
Maharagama.
5. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp, Colombo 12.

Respondents

Before: Hon. S. Thurai Raja, P.C., J.

Hon. Janak De Silva, J.

Hon. Mahinda Samayawardhena, J.

Counsel:

Dr. Sunil Coorey with Diana S. Rodrigo for Petitioner.

Rajitha Perera D.S.G. for the Respondents

Written Submissions:

01.02.2021 by the Respondents.

10.09.2020 by the Petitioner.

Argued on: 03.08.2022

Decided on: 01.08.2024

Janak De Silva, J.

The Petitioner had his primary education at Tibbotuwawa Maha Vidyalaya and sat for his Advanced Level Examination from Sri Perakumba Vidyathanaya, Polonnaruwa. He obtained an Arts Degree from the Sri Jayewardenepura University specializing in Geography. During this period, he was absorbed as a Programme Producer (Relief Worker) for the Sri Lanka Broadcasting Services (“SLBC”).

Upon completion of his degree, the Petitioner joined the Teaching Service and worked as a teacher at the Sri Perakumba Vidyathanaya, Polonnaruwa, and taught Geography. After one year as a teacher, he joined the SLBC again as Programme Producer and was made permanent after three years. In 2011, the Petitioner contested for the Kekirawa Pradeshiya Sabha and got elected.

As part of the planned programs for the efficient implementation of budget proposals of 2012, the Cabinet of Ministers decided to grant approval as a matter of policy, to recruit qualified graduates as trainees, purely on a temporary basis, for a maximum period of six (06) months, on payment of an all-inclusive monthly allowance of Rs. 10,000/=, to collect information required for each district and division, identify projects and programmes, assess the projects that were being implemented and distribute them equally between various Divisional Secretariat Divisions, and for identification of existing issues and obstacles in order to fulfill this task.

The Petitioner was recruited for this Graduate Training programme by letter dated 04.03.2012, and was assigned to the Maharagama Divisional Secretariat office for a period of six (6) months. This period was extended for another six (6) months from 02.09.2012. During this period, the Petitioner was transferred to several Grama Niladhari divisions and Divisional Secretariat divisions. The Petitioner claims that although this affected the proper training process of the Petitioner and obstructed the efficient performance of his duties, he carried out the several tasks assigned to him satisfactorily.

During this period, the Petitioner received a letter dated 08.10.2012, sent by the Secretary of the Ministry of Economic Development, by which he was assigned to that Ministry for training; and was assigned to the Kolonnawa Divisional Secretariat's 512-B Singhapura Grama Niladhari Division. The letter went on to state that after the successful completion of the training, he will be recruited according to the Development Officers Service Minute.

On 31.12.2012, the 3rd Respondent handed the Petitioner a letter dated 24.12.2012, informing him that he has been released with immediate effect to the Ministry of Public Administration. The Petitioner claims that since then he has not been served with any correspondence and has no place to report for duty. He claims that his release to the Ministry of Public Administration is clearly arbitrary, unjust and done with malicious intentions.

The Petitioner has, *inter alia*, sought the following reliefs:

- (a) Determination that the 1st and/or 2nd and/or 3rd and/or 4th Respondents have violated the Petitioner's Fundamental Rights guaranteed under Article 12(1) of the Constitution;
- (b) Order setting aside the decision of the 3rd Respondent to release the Petitioner to the Ministry of Public Administration and order the 1st Respondent to assign the Petitioner to a division in Maharagama or Kolonnawa until the conclusion of the training period;

- (c) For an order on the 1st Respondent to take steps to make permanent the Petitioner, as a Development Officer with the completion of his one-year training period;
- (d) For an order on the 1st to 3rd Respondents to pay the Petitioner his allowance from January 2013 until the final determination of this application;
- (e) For the recovery as compensation from the 1st and/or 2nd and/or 3rd and/or 4th Respondents, or from the State, a sum of Rs. 100,000/= in respect of the said violations.

Leave to proceed has been granted under Article 12(1) of the Constitution.

The Respondents deny having infringed any fundamental right of the Petitioner. They claim that the Cabinet of Ministers had on 10.01.2013, decided to appoint trainee graduates as Development Officers according to the Development Officers Service Minute published in the Gazette Extraordinary No. 1745/11 dated 14.02.2012 and No. 1774/31 dated 07.09.2012.

According to Clause 9.2.3 therein, to be considered for appointment, an unemployed graduate must be below 35 years of age. The Petitioner was born on 23.01.1974 and at the time this application was filed on 24.01.2013, he was 39 years of age. The Respondents have not impugned the Development Officers Service Minute in these proceedings. Hence, no order can be made directing the Respondents to make permanent the Petitioner as a Development Officer with the completion of his one-year training period.

The only question to be determined is whether his release to the Ministry of Public Administration has infringed his Fundamental Rights guaranteed by Article 12(1) of the Constitution.

At the outset it must be observed that the Petitioner did not fit the class of persons to whom employment was to be offered by the Government under the Unemployed Graduates scheme. He was at the relevant time, holding a permanent post in the SLBC and an elected member of the Kekirawa Pradeshiya Sabhawa.

The contention of the Petitioner is that his release to the Ministry of Public Administration was due to his involvement in trade union activities. However, it appears that the actual reason is his application for official leave to attend a meeting of the Kekirawa Pradeshiya Sabhawa at which the budget was to be debated and approved. The official leave was applied for by letter dated 23.11.2012. The 3rd Respondent on receiving this request approved only personal leave and refused to grant permission for official leave. Thereafter, by letter dated 26.11.2012, the 3rd Respondent sought the views of the 1st Respondent as to how such requests are to be considered.

Thereupon, the 1st Respondent by letter dated 19.12.2012 wrote to the Secretary, Ministry of Public Administration and Home Affairs informing that the Petitioner is released to the Ministry to be transferred to the District Secretariat of Anuradhapura. The following reasons were given for this action:

- (1) The Petitioner has to take part at various meetings within the Kekirawa Pradeshiya Sabhawa area.
- (2) Due to his responsibilities as a Member of the Kekirawa Pradeshiya Sabhawa and the need to obtain leave to attend to matters connected therewith, his maximum participation is not possible with the work as a Graduate Trainee.
- (3) There is no provision for granting of leave of this nature during the period of training.
- (4) The conduct of the Petitioner is disruptive to the work of other officers.

The version of the Respondents is somewhat corroborated by the counter affidavit of the Petitioner. He states that when he arrived at the Ministry of Public Administration, the 2nd Respondent informed him that he need not come there and that if the Petitioner wished, arrangements could be made for the Petitioner to go to the District of Anuradhapura even the next day. However, the Petitioner states that the 2nd Respondent treated him with utmost disrespect when he met him on 04.01.2013.

This evidence of the Petitioner is belated and lacks probative value. The Petitioner filed an affidavit incorrectly dated 24.01.2012 (the petition is dated 24.01.2013) along with his petition. However, there is no mention therein of the alleged meeting on 04.01.2013 although it was a critical part of his case. It is only in his counter affidavit has the Petitioner taken up this position.

This has deprived the 2nd Respondent of an opportunity of meeting the allegations made by the Petitioner. Counter affidavits should not be a mode of presenting new evidence by a petitioner in a Fundamental Rights application where evidence was available at the time of filing the application, and important to the case of the petitioner. If we allow such a course of action and act on such evidence, it deprives the Respondents of procedural fairness.

I do not find anything objectionable in the proposal made by the 1st Respondent. He did not propose terminating the traineeship of the Petitioner. Instead, he proposed transferring him to the area in which he was an elected local authority member. The local authorities are aimed at providing certain essential services to the community and members of these institutions need to be constantly in touch with their electorate to perform their duties to the expected standard. The transfer to the District Secretariat of Anuradhapura would undoubtedly have provided the Petitioner a better opportunity to fulfil his obligations to the public while continuing his traineeship under the Graduate Training scheme.

On an examination of all the facts in this case, the transfer of the Petitioner to the Ministry of Public Administration to be assigned to the District Secretariat of Anuradhapura has not infringed the Fundamental Rights of the Petitioner guaranteed by Article 12(1) of the Constitution.

The application is dismissed without costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court