

**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 Sri  
Lanka.

Ranjith Udaya Kumara Rajapakse,  
No.43, Amunugama,  
Gunnapana.

**Petitioner**

**S.C.(F.R.) Application No. 374/2017.**

Vs.

1. G.K.G.A.R.P.K. Nandana,  
Secretary,  
Chief Ministry and  
Ministry of Education,  
Central Provincial Council,  
Provincial Council Complex,  
Pallakele, Kundasale.
- 1A. K.G.Upali Ranawaka,  
Secretary,  
Chief Ministry and  
Ministry of Education,  
Central Provincial Council,  
Provincial Council Complex,  
Pallakele, Kundasale.
2. Sarath Ekanayake  
Chief Minister and  
Minister of Education,  
Central Provincial Council,  
Provincial Council Complex,  
Pallakele, Kundasale.
- 2A. Gamini Rajaratne,

Chief Minister and  
Minister of Education,  
Central Provincial Council,  
Provincial Council Complex,  
Pallakele, Kundasale.

3. Lalith U. Gamage,  
Governor of the Central Province,  
Governor's Secretariat,  
Palace Square,  
Kandy.
04. P.D. Amarakoon,  
Chariman/ Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
05. W.M.S.D. Weerakoon,  
Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
06. A.M. Wais,  
Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
07. Rohitha Tennakoon,  
Member,  
Provincial Public Service

Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.

08. N.D.K. Piumsiri,  
Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
- 08.A. W.M.K.K. Karunaratne,  
Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
09. T.A. Don Wilson Dayananda,  
Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
- 09A. N.M.D.R. Herath,  
Member,  
Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.
- 09B. Keerthi Wickramaratne,  
Member,

Provincial Public Service  
Commission of the Central  
Provincial Council  
No. 244, Katugastota Road,  
Kandy.

10. Gamini Rajarathna,  
Chief Secretary of the Central  
Province,  
Chief Secretary's office,  
Kandy.
11. E.P.T.K. Ekanayake,  
Provincial Director of Education,  
Provincial Department of  
Education,  
Kandy.
12. M.W. Wijeratne,  
Zonal Director of Education,  
Zonal Education Office,  
Kandy.
13. Prof. K.K.C.K. Perera,  
Secretary,  
Ministry of Education,  
"Isurupaya", Pelawatte,  
Battaramulla.
14. M.R.P. Mayadunne,  
Principal,  
Vidyarthi College,  
Kandy.
15. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**BEFORE** : **BUWANEKA ALUWIHARE, PC., J.**  
**JANAK DE SILVA, J.**  
**ACHALA WENGAPPULI, J.**

**COUNSEL** : Sanjeewa Jayawardene, P.C. for the Petitioner.  
Viveka Siriwardene, (P.C.), ASG for the 1<sup>st</sup> to  
13<sup>th</sup> and 15<sup>th</sup> Respondents.

**ARGUED ON** : 18<sup>th</sup> January, 2023

**DECIDED ON** : 13<sup>th</sup> November, 2023

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**ACHALA WENGAPPULI, J.**

The Petitioner, a Grade 3 Sri Lanka Education Administrative Service officer, was transferred on the basis of 'exigencies of service' from *Vidyarthi* College, Kandy where he functioned as its principal. In invoking the jurisdiction conferred on this Court, under Articles 17 and 126 of the Constitution, the Petitioner alleges that the decisions of the 1<sup>st</sup> and 12<sup>th</sup> Respondent to transfer him are violative of his fundamental rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution.

It was strongly asserted by the Petitioner that the impugned transfer was made illegally, unlawfully, arbitrarily, unreasonably, unfairly, irrationally and was prompted by *mala fides*, ulterior motives and extraneous considerations.

On 09.02.2018, this Court granted leave to proceed as prayed for.

At the hearing, learned President's Counsel submitted on behalf of the Petitioner that since assuming office as the principal of *Vidyartha* College in March 2015, the Petitioner had effectively rectified and resolved many a problem that affected proper administration of the school. It was further submitted that the Petitioner had eradicated the drug abuse among student population that prevailed when he assumed office and instilled discipline in them and, as a result, was able to restore the status of *Vidyartha* College as a leading and respectable boys' school in Kandy.

The Petitioner averred in his petition that, commencing from or about November 2016, there were several anonymous letters addressed to Central and Provincial Authorities, containing a series of false, frivolous and defamatory allegations against him. The Petitioner further added that, however, none of the several investigations carried out by the provincial authorities on these anonymous complaints revealed any misconduct, irregularity, fault or wrongdoing on his part.

The Petitioner asserts that he was "*surprised*", when he received a letter, signed by the Zonal Director of Education (the 12<sup>th</sup> Respondent), on 25.09.2017 (P18), which enclosed another letter dated 22.09.2017 (P17) signed by the Secretary to the Provincial Ministry of Education (the 1<sup>st</sup> Respondent), conveying of his transfer on 'exigencies of service' with immediate effect. He was further directed to report to the Provincial Department of Education. The Petitioner, therefore, seeks a declaration of this Court that the said decisions are illegal, *null* and *void*. He further sought to nullify the appointment of the 14<sup>th</sup> Respondent, who succeeded him as the principal, *Vidyartha* College, and in addition,

prays for a declaration that the Respondents have violated his fundamental rights guaranteed under Articles 12(1) and 14(1)(g).

The Petitioner contended that the decisions made by the 1<sup>st</sup> and 12<sup>th</sup> Respondent to transfer him on 'exigencies of service', were violative of his fundamental rights. He relied on the following grounds, in order to substantiate his contention;

- a. the decision to transfer was made *mala fide*, and with ulterior motives and on extraneous considerations
- b. letters P17 and P18 were issued in blatant violation of the Rules of the Public Service Commission, since no reasons were provided for the decision to transfer the Petitioner on 'exigencies of service',
- c. the transfer of the Petitioner, not being a disciplinary transfer but on exigencies of service, was made without satisfying the ingredients that constitute conditions precedent to the lawful exercise of power,
- d. the transfer was not made in respect of any particular post or position at the Department of Education and there was no mention that the Petitioner's services are needed at that institution,
- e. the normative period of 5 years to serve in one station was summarily denied.

The 1<sup>st</sup> Respondent, through his Statement of Objections, denied the allegation of infringement of fundamental rights of the Petitioner and resisted his entitlement to the reliefs sought. The 1<sup>st</sup> Respondent averred that an exigency of service arose to have the Petitioner transferred to the Central Provincial Department of Education, in order

to facilitate the conduct of several preliminary inquiries. The 1<sup>st</sup> Respondent also seeks to counter the Petitioner's claim that none of the inquiries conducted by the Respondents revealed any misconduct, irregularity, a fault or wrong doing on his part by stating that the latter was well aware of the fact that there were several preliminary inquiries being conducted out regarding multiple allegations of misconduct, which included admission of students contrary to the applicable circulars, accepting donations for admission of students, printing and selling of diaries to students, renting out school premises to park private vehicles for a fee and permitting a private educational institution to erect a hoarding within school premises for a payment.

Whilst denying the impugned transfer was made arbitrarily, unreasonably, *mala fide* and for collateral purposes the 1<sup>st</sup> Respondent avers that the reasons for the impugned decision to transfer the Petitioner on exigency of service arose due to following factors;

- i. his failure to co-operate with the inquiring officers and causing obstruction to the unimpeded conduct of preliminary investigations;
- ii. his conduct of repeatedly making frivolous excuses in order to avoid making a statement to the inquiring officers, despite the many opportunities that were afforded to him;
- iii. his presence as the principal of the school which became a hindrance to record statements of the members of staff who came under his direct supervision and control.

It is the position of the 1<sup>st</sup> Respondent that the 14<sup>th</sup> Respondent's appointment was intended to fill the vacancy created by the impugned



transfer and made only as a measure to avert the situation that had arisen due to the conduct of the Petitioner.

In support of the contention of the Petitioner that he was transferred out illegally by the 1<sup>st</sup> and 12<sup>th</sup> Respondents, alleging that they acted *mala fide*, with ulterior motives and on extraneous considerations due to 'political' pressure, learned President's Counsel relied on the fact that the Respondents, in spite of an already concluded preliminary inquiry on the allegation of irregular admissions of students, had more initiated a second preliminary inquiry on the same unfounded allegation, in order to somehow rope in him. Learned Counsel further contended that the said second inquiry was initiated due to political interference and that too only after the Presidential Secretariat had directed the Respondents to conduct a '*comprehensive*' investigation by "*an experienced officer*" (R12).

This contention shall be considered at the outset of this judgment for its merits.

The 12<sup>th</sup> Respondent, by letter dated 10.03.2017 (R1) directed a Deputy Director of Education to conduct a preliminary inquiry into the allegations of admission of students to *Vidyarthi* College irregularly and submit a report along with his recommendations. The said Deputy Director of Education had conducted an inquiry on the same day and submitted his report (R2). In that report, the inquirer had identified of 39 specific instances of irregular admission of students, contrary to applicable circulars. The inquirer also made an entry, in the logbook of the school, directing that no student shall be admitted to any of the grades until further notice.

In spite of the said *prima facie* finding that there were instances of irregular student admissions, the inquirer however did not make any recommendations in R2, nor did he ensure compliance of the provisions contained in Clause 13.12 of Chapter XLVII of the Establishment Code, which states “ [T]he officer conducting the preliminary investigation should also prepare a draft charge sheet as per Appendix 5 of this Code and forward it to the relevant authority in the event that sufficient material is disclosed that call for disciplinary action against the suspect officer ...”.

The Petitioner, along with his counter affidavit, had tendered a letter containing his observations (CA-1), that had been submitted to the 1<sup>st</sup> Respondent on 26.04.2017. This was in response to the allegation of irregular admission of students. However, the 1<sup>st</sup> Respondent, in his Statement of Objections, failed to disclose of any decision taken either on P2 or CA-1 and of any follow up action taken thereafter. Interestingly, the counter affidavit of the Petitioner, also annexed documents CA-2(a) to (e), by which the 1<sup>st</sup> Respondent had directed him to admit students on several occasions outside the regular admission process.

On 08.08.2017, after almost five months since P2 was tendered, the Director (investigation) of the Presidential Secretariat, called a report from the Director of Education of Kandy on several allegations that were received against the Petitioner (R6). This report was to be submitted to the President of the Republic. The allegations referred to in R6 were in relation to several other matters and did not include the allegation of irregular admission of students. However, upon this direction from the Presidential Secretariat, the 12<sup>th</sup> Respondent appointed a three-member team of inquirers on 15.08.2017 (R7) and

directed them to conduct a preliminary investigation into the allegations referred to in R6. The report of this inquiry was submitted to the 12<sup>th</sup> Respondent by the panel of inquirers on 24.09.2017 (R10).

The 1<sup>st</sup> Respondent, however, failed to explain the reason to appoint another two-member panel of inquirers in respect of the allegation of irregular admission of students, in spite of an already concluded inquiry. The report of the said panel of inquirers, who were appointed to inquire into the allegation of irregular admission of students, issued their report on 17.08.2018 (R10A). The introduction of the said report indicates that the inquiry panel was constituted and directed by the 12<sup>th</sup> Respondent to conduct a preliminary inquiry on 15.08.2017 and also made reference to a letter dated 03.07.2017, issued by the Secretary to the Governor of the Central Province in that regard.

It is not clear that the report of the 1<sup>st</sup> inquirer (R2) was forwarded to the Presidential Secretariat at any point of time. However, it is to be noted that the report R10A, prepared by the said two-member panel of inquirers on irregular admission of students, consists of a total of 32 pages whereas the 1<sup>st</sup> report (R2), which also refers to inquiry into the same allegation, confines to a mere one side of a single A4 sheet of paper. Considered in this context, the directions issued by the Presidential Secretariat on the 1<sup>st</sup> Respondent to conduct a 'comprehensive' investigation by "an experienced officer" would have been resulted after perusal of P2.

Similarly, the enquiries made by the Presidential Secretariat regarding the conduct of inquiries was necessitated due to a petition addressed to that establishment by a group of 'concerned parents' of certain students of *Vidyarthi* College. In this context, it is relevant to

note here, that another group, claiming themselves to be committee members of the School Development Society, also made an allegation in their letter to the Presidential Secretariat that, despite that fact of making several complaints against the Petitioner, the Respondents have thus far failed to initiate a single inquiry (P12(c)). They attributed the close relationship the Respondents had with the Petitioner as the reason for the said inaction.

If these two factors, the obvious failure to take any meaningful action on R2 and the decision to appoint a two-member inquiry panel to conduct a second preliminary inquiry, are considered together, it appears that the 2<sup>nd</sup> inquiry was prompted only when the Presidential Secretariat had indicated its concerns on R2. This comparison indicates that the allegation, that there were *mala fides*, ulterior motives and extraneous considerations on the part of the Respondents in making the transfer, is not supported by the available material. It appears that, the actions of the Respondent indicate contrary position to the one presented by the Petitioner as clearly a very conciliatory approach had been adopted, in dealing with the allegations of irregular admission of students. This inference finds further support when considered in the light of another factor, which will be dealt during the latter part of this judgment.

Learned President's Counsel's other contention was founded on the failure of the Respondents to provide reasons for their decision, as set out in the applicable Sections of the Rules of Procedure of the Public Service Commission, which they were bound to comply with.

In this regard, learned President's Counsel contended that the decision to transfer the Petitioner was said to have been taken on the

premise that his retention in his post was inappropriate due to the possibility of obstructions and interference to the conducting of an inquiry. If that being the real reason, learned Counsel argued that, in fact the transfer was made on disciplinary grounds and not on an exigency of service.

Learned President's Counsel also contended that, if indeed the purported allegations against the Petitioner were genuine and legitimate as the Respondents claim, they had recourse to Section 222 of the said Rules, under which a transfer order could validly be made, but only after giving reasons. Thus, he submitted that the illegality which taints the decision to transfer is the failure of the Respondents to comply with the provisions of Section 222, where a mandatory requirement to give reasons for the transfer of a public officer was imposed.

It appears from the above, that the contention advanced by the Petitioner before this Court on this point is that he was transferred in fact on 'disciplinary grounds' and not on exigencies of service is in turn based on the 1<sup>st</sup> Respondent's explanation that the transfer was made in order to conduct the several investigations initiated by them unimpeded by actions of the Petitioner. The letters of transfer P17 and P18 indicate that the Petitioner was transferred on exigencies of services and not on disciplinary grounds.

In view of these divergent positions of the contesting parties, it is relevant to have a cursory glance over the scheme of transfer that had been laid down in the Procedural Rules of the Public Service Commission, published in the Government Gazette (Extraordinary) No.

1589/30, dated 20.04.2009 (hereinafter referred to as the “Rules”), which deals with different types of transfers that could be made.

Section 195 of the said Rules stipulates all or several or any one of the following objectives are sought to be achieved by transferring a public officer;

- i. fill a vacancy in an institution;
- ii. meet the administrative needs of an institution;
- iii. promote the efficiency and productivity of an institution;
- iv. meet the needs of a disciplinary process;
- v. implement a disciplinary order;
- vi. provide the officer with an opportunity to gain experience in a wider field;
- vii. provide the officer with an opportunity for professional development and improve of his skills
- viii. provide relief from personal difficulties experienced by the officer.

Thus, in terms of Article 55 of the Constitution and Section 194, a public officer can be transferred only by the Public Service Commission or by an Authority with Delegated Power of the Commission to achieve any one or more of these objectives.

Section 196 states as follows;

“Transfers are fourfold as indicated below:

- (i) Transfers done annually;
- (ii) Transfers done exigencies of service;
- (iii) Transfers done on disciplinary grounds;

(iv) Mutual transfers on requests made by officers.”

Of these fourfold categories of transfers, the ones that would be examined in relation to the instant matter are the transfers on exigencies of service and transfers on disciplinary grounds. Sections 218 to 221 governs the transfer procedure applicable to service exigencies while Section 222 governs the transfer procedure applicable to transfers made on disciplinary grounds.

The contention of the Petitioner in this respect is twofold. First, he contends that the Respondents have blatantly violated the said procedural rules, in their failure to discharge the obligation to convey reasons that formed the basis of the transfer to the Petitioner and cited *dicta* of Sripathan CJ in *Sumedha Jayaweera v Dharmasena Dissanayake, Chairman of the Public Service Commission* (SC(FR) Application No. 484/2011 – decided on 16.01.2017).

Secondly, he contended that the Respondent’s claim of obstructing or refusing to co-operate with the inquiries that were being conducted against him is a belated concoction by the 1<sup>st</sup> Respondent to deceptively justify the impugned transfer. In this regard, the Petitioner stressed that the 1<sup>st</sup> Respondent must present credible material before this Court in order to establish the said allegation that he refused to cooperate with the inquiring officers. He further contended that the inquiry reports reveal that even though the Petitioner was unable to present himself for investigations on two occasions, he had subsequently cooperated with the inquirers by making statements within a reasonable time.

In support of the contention that the Respondent failed to adduce reasons for the transfer, the Petitioner relied heavily on the provisions of the Section 222 (iii) which states “ *[W]here it is found on matters revealed either before the beginning, or in the course of an investigation or on existing circumstances that the retention of a Public Officer in his post or station may obstruct the conduct of a preliminary investigation*” such an officer could be transferred out even without prior notice. It was his position that the transfer order was made under this Section. Section 222 of the Rules further imposes a duty on the appointing authority that it “ *shall convey the reasons in writing to the officer concerned.*” Thus, the Petitioner contends that the impugned transfer is illegal, as it was made in violation of the provisions contained in these Sections.

In presenting a counter argument, learned Addl. S.G submitted that in fact an exigency arose to have the Petitioner transferred out with immediate effect, in order to conclude the investigations against him as his presence in the school as its principal had become a hindrance to record statements of those who came under his direct control and supervision. She submitted therefore he was rightly transferred out on exigencies of services to assume duties as Assistant Director of Education at the Provincial Department of Education. She further submitted that since the completion of the preliminary inquiries, the Petitioner was served with a charge sheet containing a total 13 charges, which in itself is an indication as to the seriousness of the allegations and the nature of the inquiries that had been conducted by the Respondents. Learned Addl. S.G. also contended that the Petitioner had made blatantly a false statement in his petition by stating that “ *... no disciplinary action whatsoever had been initiated or taken against the Petitioner*”.



It appears from the contention that had been advanced by the Petitioner, that he presupposes the fact that an Appointing Authority could transfer a public officer, who is facing a preliminary inquiry from station he currently serves, only under Section 222(iii) as that is the sub Section, which provide for situations where it found that the retention of that officer may obstruct the conduct of a preliminary inquiry. This Section deals with transfers made on disciplinary grounds.

However, the Petitioner was transferred not on disciplinary grounds but on exigencies of service, as the said letters P17 and P18 clearly indicate. In view of the contention of the Petitioner, a question arises whether there is a similar provision in the Rules of Procedure that govern transfers on exigencies of service, which also permits the Appointing Authority to transfer an officer due his failure to cooperate with the conduct of a preliminary inquiry. Section 218, which generally deals with transfers made on exigencies of service, in sub section (iii) provides an answer to that question in the affirmative. Section 218(iii) states “ *[W]here it is found, due to administrative reasons, that the retention of an officer in his present station is not suitable.*”

Thus, in both these instances, Rules of Procedure indeed provide for transfer of a Public Officer from his current station, but such a transfer could validly be made only when the conditions that are stipulated in the said Sections are satisfied and fully complied with. However, it must be noted here that the considerations that apply in these two specific instances are slightly different to each other in certain aspects.

In view of the Respondent’s justification of the transfer and the Petitioner’s contention that it was a concocted position, taken up

belatedly as an attempt to justify otherwise an illegal transfer, it becomes necessary at this stage to consider whether there were factors which could reasonably be taken as “*administrative reasons*” which in turn would render “*the retention of an officer in his present station is not suitable*”, and those factors did exist before the issuance of P17 (on 22.09.2017).

It has been stated earlier on in this judgment that there was a preliminary inquiry that had already been conducted against the Petitioner on irregular admission of students and its report R2 was tendered. During this inquiry, as R2 indicate, the Petitioner had provided necessary information to the inquirer facilitating the conduct of the said inquiry. The Deputy Director made a log entry of the school on 10.03.2017 (R3), expressing his appreciation of the assistance rendered by the Petitioner and his staff during the course of his inquiry. The Respondents have not decided that at that point of time that it was expedient to transfer the Petitioner, notwithstanding the serious allegation that had been inquired into i.e., irregular admission of students.

In addition to the said allegation, there were other anonymous complaints alleging several other acts of wrongdoing on the part of the Petitioner. One such allegation was that the Petitioner had misused the school grounds by allowing it to be used as a parking area and collected a substantial amount of funds. The Petitioner himself was aware of these allegations as some of the anonymous petitions were in fact copied to him (P12(a)-(e)) by the Respondents themselves.

The inquirer, who was appointed to inquire into the said allegation of misuse of school grounds, reported back to 12<sup>th</sup>

Respondent that the Petitioner declined to make a statement, when requested to do so on 13.09.2017 and continued to avoid making one, despite several opportunities being afforded for that purpose (R5). The said report highlighted the fact that the Petitioner also failed to handover the receipt books used to issue parking tickets and owing to those reasons the inquirer was unable to complete her report.

It was during this time that the Presidential Secretariat, directed the 1<sup>st</sup> Respondent to submit a report on or before 22.08.2017 for the consideration of the President of the Republic (R6).

The conduct attributed to the Petitioner, as indicative in the report R5, signifies a clear change of his behaviour towards the pending inquiries. Having rendered his assistance to conduct the first inquiry (P2), after a mere lapse of six months and whilst serving in the same school, the Petitioner had adopted a contrasting approach with a view to delay the conclusion of several inquiries that were pending against him. This was noted by the 11<sup>th</sup> Respondent who conveyed same to the 1<sup>st</sup> Respondent, by a letter dated 18.09.2017 (R8).

The 1<sup>st</sup> instance of the Petitioner's evasive approach was noted by the Respondents on 13.09.2017(R5). In R5 a specific reference was made that the Petitioner refused to make a statement citing different reasons. The 2<sup>nd</sup> instance of not cooperating with the inquirers was noted in R8, a letter issued on 18.09.2017.

Paragraph 13.11 of Chapter XLVIII of the Establishment Code, under the heading "Rules of Disciplinary Procedure" it is stated that *"[I]t would be an act of grave misconduct for an officer to refuse to make a statement with regard to an investigation when he is required to do so by an*

*officer duly appointed to conduct a preliminary investigation. When such an incident is reported by an officer conducting a preliminary investigation, it will be the responsibility of the relevant Head of Institution to report such fact to the relevant Disciplinary Authority to enable him to take disciplinary action against the officer concerned."*

Contrary to the claim of the Petitioner that he was illegally transferred out for extraneous reasons, it is thus evident that the Respondents have taken the decision to transfer him only after they were made aware of his conduct, which was clearly indicative of his reluctance to voluntarily participate in the inquiries pending against him. In addition, the Petitioner was reported by the inquirer, due to the failure of the former to submit relevant documentation that were in his possession, when demanded.

In view of the foregoing, I am of the considered view that there were factors that were presented before for the Respondents for them to reasonably entertain "*administrative reasons*" that "*the retention of an officer in his present station is not suitable*". In the judgment of *Waidyaratne v Provincial Commissioner- Local Government and Others* (SCFR Application No. 137/2011 – decided on 25.10.2019) *Amarasekara, J.* was of the view when there are grounds to satisfy that there was a situation that demanded the transfer was necessary for the proper administration of the service and the workplace, a need of a disciplinary inquiry does not arise.

The other premise on which the Petitioner sought to impugn the decision to transfer (P17) was the failure of the Respondents to provide reasons for the said decision other than merely stating "*exigencies of service*". He relied on the Section 221 where it states that the Appointing

Authority “... shall convey reasons to the officer concerned”. Section 221 not only imposes a duty on the Appointing Authority to convey reasons for the decision to transfer but also impose a similar duty that it “... shall record in the relevant file clearly all the factors that caused the transfer of an officer on exigencies of service.”

It is to be noted that the 1<sup>st</sup> Respondent, failed to tender a copy of the minute/entry made in the relevant file, in which the several factors that contributed to the decision to transfer, should have been clearly set out. The letter of transfer P17 merely conveyed that the Petitioner was transferred due to exigencies of service. It cannot be emphasised enough that the necessity to comply with the Rules of Procedure, as set out by the Public Service Commission, by the Appointing Authorities and thereby ensuring transparency in the decision-making process regarding transfer of public officers on exigencies of service. The strict compliance of the Rules is therefore fundamental to the proper administration of the Public Service.

The question, whether the Petitioner was conveyed of the reasons of his transfer, shall be considered next. In this particular instant, it must be noted that the Petitioner was possessed of the fact of his impending transfer well in advance, even prior to the issuance of P17 on 22.09.2017. This was evident from the contents of the letter P12(f) annexed to the petition. The Petitioner tendered copies of several anonymous letters and petitions were sent to him by the 11<sup>th</sup> and 12<sup>th</sup> Respondents, annexed to his petition. Letter P12(f) to be a one such petition, appears to have been sent by a group of parents who attended a meeting convened by the Petitioner. What is important is that the said meeting was convened on 20.09.2017, two days prior to the issuance of

P17, and the Petitioner had publicly declared in that gathering of his transfer. He described his imminent transfer as a 'promotional' transfer. There is no denial by the Petitioner in his petition as to the truth of the contents of this particular letter or to the specific event it speaks of. Prior to this meeting, a petition was signed by 132 members of the staff of *Vidyarthi* College, addressed the Chief Minister informing him of certain moves to have the Petitioner transferred out (P15).

The Petitioner claims there were strong rumours indicating that he would be transferred out soon. But it is evident from this letter, despite the rumours, the Petitioner himself was aware of the fact that he would be transferred out of the school. He also knew that transfer in effect offered him a 'promotion'. Coupled with this fact, the Petitioner's presence in the Provincial Department of Education on 22.09.2017 for the purpose of making a statement (R10), being the day on which P17 was issued, makes it more probable that he was informed of the reasons for the issuance of letter P17 as well.

Letter of transfer P17 was signed by the 1<sup>st</sup> Respondent whereas letter of transfer P18 was signed by the 12<sup>th</sup> Respondent on the 25.09.2017. The fact that Petitioner was in contact with the 12<sup>th</sup> Respondent in the previous day, before P18 was signed, is evident from his own statement to police on 24.09.2017 (P10(e)). In his statement, the Petitioner mentions that he sought advice on that very morning from the 12<sup>th</sup> Respondent before making the statement, meant for future reference. In these circumstances, it is highly unlikely that the Petitioner was not informed of the reasons for his transfer, given the apparent close relationship he had with the 12<sup>th</sup> Respondent.

The Petitioner, however, averred in paragraph 31 of his petition that “*to my shock and surprise, I received a letter on 25.09.2017 from/through the 12<sup>th</sup> Respondent, which enclosed a further letter sent to me by the 1<sup>st</sup> Respondent's predecessor in office (dated 22.09.2017) informing that I had been transferred with immediate effect ...*”. In view of the several factors considered in the preceding paragraph, this particular averment of the Petitioner, claiming that he was ‘*surprised*’ to receive the transfer order, could not be accepted as an accurate description of the events that had taken place. Thus, the fact that Petitioner had prior knowledge of his impending transfer and the type of transfer is undoubtedly evident from his own actions.

Section 221 as well as Section 222 (iii) imposes a duty on the Appointing Authority to convey reasons for transfer to the officer concerned. Section 221 lay down the procedure and the manner in which a decision should be made to transfer a public officer on exigencies of service, when it specified a requirement of making an entry in the relevant file of all the factors that caused the transfer. It also imposes a similar duty that it shall be conveyed to the officer under transfer.

However, a significant difference exists in relation to the manner of conveying the reasons. Section 222 (iii) speaks of conveying the reasons to transfer “*in writing*” to the transferred officer whereas Section 221, speaks of mere conveying the reasons, allowing the Appointing Authority to convey reasons for transfer to the concerned officer in any other form as well.

Returning to the question, whether the 1<sup>st</sup> Respondent “conveyed” the reasons to the Petitioner in this particular instance, in

my view, it could be answered in the affirmative since he was most probably was verbally conveyed of the reasons for his transfer.

Although this form of informal conveyance cannot be considered as the best method that should be adopted and followed by the Appointing Authority in making orders for transfer, nor it could be taken as an acceptable manner of formally conveying the reasons for transfer. In *Range Bandara v Gen. Anuruddha Ratwatte and Another* (1997) 3 Sri L.R. 360 Mark Fernando J held (at p. 372);

*“... 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.”*

A similar approach was taken in *Chandrasena v Kulatunga and Others* (1996) 2 Sri L.R. 327. Connected to the issue of giving reasons for the transfer, learned Presidents Counsel for the Petitioner relied on the judgment of Sripavan CJ in *Sumedha Jayaweera v Prof. Dayasiri Fernando* (supra) where his Lordship states thus;

*“Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the administrative body itself. Conveying reasons is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimize the chances of unconscious infiltration of bias or unfairness in the conclusion. The duty to*



*adduce reasons will be regarded as fair and legitimate by a reasonable man and will discard irrelevant and extraneous considerations. Therefore, conveying reasons is one of the essentials of justice (Vide S. N. Mukherjee Vs. Union of India (1990) 4 S.C.C. 594; A.I.R. 1990 S.C. 1984.)*

But, since the circumstances referred to in the preceding paragraphs are strongly supportive of the conclusion that the Petitioner had been adequately forewarned of the impending transfer and therefore the reasons for his transfer were “conveyed” to the Petitioner even before P17 was issued, it could be taken as sufficient compliance of the procedural requirements imposed by Section 221, in relation to this particular instance.

In a recent pronouncement of this Court, the judgment of *Bandulani Basnayake v Sunil Hettiarachchi and Others* (SC(FR) Application No. 311/2016 - decided on 16.10.2023) *De Silva J*, in reference to the Rules made by Public Service Commission stated “[I]t is important to follow them in all matters pertaining to public officers. Failure to do so will result in a violation of Article 12(1) of the Constitution.” This was an instance where this Court found an infringement of fundamental rights of the petitioner, when she was transferred on exigencies of service, after an audit inquiry which conducted and concluded without recording a statement from her and thereby denying her an opportunity to respond to any of the allegations that had been inquired into. Strangely, the said audit report did not even recommend her transfer.

However, the factual position revealed from the pleadings in the instant matter is totally different to the position revealed in the said application.

Thus, after a careful consideration of all the circumstances, I am of the view that the decision to transfer the Petitioner was made on account of his conduct which provided justification for entertaining an “*administrative reason*” that a preliminary inquiry could not be conducted unimpeded with the presence of the Petitioner. The said decision thus cannot be termed as an unreasonable decision. Moreover, the Respondents have sufficiently “conveyed” reasons for the transfer order, well in advance to the issuance of P17.

In these circumstances, I hold that the Petitioner failed to establish that the executive and administrative action of the Respondents in transferring him, infringed his fundamental rights guaranteed to under Articles 12(1) and 14(1)(g) of the Constitution.

Accordingly, the petition of the Petitioner is dismissed without costs.

Application dismissed.

**JUDGE OF THE SUPREME COURT**

**BUWANEKA ALUWIHARE, PC., J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA, J**

I agree.

**JUDGE OF THE SUPREME COURT**