

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

In the matter of an application under and in terms of Article 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

L. Saman Kumara,  
No. 04/3, Jaya Samarugama,  
Kandana.

**Petitioner**

**S.C.(F.R.) Application No: 171/2017**

**Vs.**

1. Rathnakumara Collure,  
District Medical Officer,  
District Hospital, Kandana.
2. U. L. Perera,  
Director, Colombo Teaching Hospital,  
Ragama.
3. S. K. Gamage,  
Administrative Officer, Medical Support  
Division, No. 357, Baddegama,  
Wimalawansa Mawatha, Colombo 10.
4. D. M. C. K. Dissanayake,  
Director (Control) 04.
5. J. M. W. Jayasundara Bandara,  
Director General of Health Services.

4<sup>th</sup> to 5<sup>th</sup> Respondents all of;

Ministry of Health, Nutrition and  
Indigenous Medicine, "Sawsiripaya",  
No. 385, Rev. Baddegama Wimalawansa  
Thero Mawatha, Colombo 10.

6. The Honourable Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before:** Hon. Murdu N. B. Fernando, PC, J.

Hon. Janak De Silva, J.

Hon. K. Priyantha Fernando, J.

**Counsel:**

Pulasthi Hewamanna with Githmi Wijenarayana for the Petitioner

Rajitha Perera, D.S.G. for the Respondents

**Written Submissions:**

17.06.2020 and 09.10.2023 by the Petitioner

13.01.2021 and 25.10.2023 by the Respondents

**Argued on:** 25.09.2023

**Decided on:** 26.01.2024

**Janak De Silva, J.**

At all times material to this application, the Petitioner was an Assistant Sanitary Labourer at the Ministry of Healthcare & Nutrition. He was attached to the District Hospital of Kandana. By letter dated 08.12.2016 (P6), the 2<sup>nd</sup> Respondent transferred the Petitioner to the North Colombo Base Hospital, Mulleriyawa due to administrative reasons. This transfer was sanctioned by the then Acting Director General of Health Services (5R3a).

This application was filed on 12<sup>th</sup> May 2017. The salary of the Petitioner was not paid for more than three months from the date of transfer to the date of filing.

The Petitioner alleges that his transfer was arbitrary, capricious, irrational, tainted with malice, ultra vires the powers of any one or more of the Respondents and constitutes an infringement and continuous infringement of the fundamental rights guaranteed under Article 12 (1) and 14 (1) (g) of the Constitution.

It is further alleged that the 2<sup>nd</sup> and 4<sup>th</sup> Respondents acted in contravention of sections 219, 220 and 221 of the Procedural Rules on Appointment, Promotion and Transfer of Public Officers (“PSC Rules”).

Leave to proceed was granted only under Article 12 (1) of the Constitution.

According to the Petitioner, by letter dated 08.03.2015 [P2(a)], he made a request to the 1<sup>st</sup> Respondent for official quarters due to difficulties in travelling. Consequent to another appeal made to the 1<sup>st</sup> Respondent, the Petitioner was informed that a committee will convene on 30.11.2016 [P3] to assess requests made to provide quarters for applicants.

On or about 30.11.2016 [P4], the Petitioner attempted to submit his letter of request for quarters. The security officer attached to the District Hospital Kandana forcibly read the letter of request that the Petitioner had prepared to submit to the committee. After an altercation with the Petitioner, the security officer, who himself is residing in one of the official quarters deemed that the letter is averse to his interests and to the utter surprise and dismay of the Petitioner, tore the letter.

The Petitioner complained of this conduct to the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent, by letter dated 30.11.2016 [P5(a)], informed him that a complaint had been lodged by the said security officer against the Petitioner alleging that the Petitioner had berated a female patient who attended the hospital to receive medication. The Petitioner was directed to provide reasons to exonerate himself from the allegations within three days. The Petitioner submitted his reply by letter dated 01.12.2016 [P5(b)].

Thereafter, the Petitioner received letter dated 08.12.2016 [P6] issued by the 2<sup>nd</sup> Respondent informing him of his transfer to the Colombo North Teaching Hospital, Ragama with immediate effect due to *administrative reasons*. Aggrieved by the sudden and arbitrary transfer, the Petitioner sought redress by appealing to the 4<sup>th</sup> Respondent. Consequently, the Petitioner was transferred to the Medical Supplies Division in Colombo by letter dated 06.01.2017 [P7(b)].

Since commencing work in the Medical Supplies Division, the Petitioner has not been assigned any work. According to the Petitioner, this is indicative that his services are not required there.

Moreover, the Petitioner has been forced to report for work for four months, from December 2016 till April 2017 without any pay. According to the Petitioner, in order for him to receive his salary, his personal file needs to be released from his previous work station in District Hospital Kandana to the Medical Supplies Division. The District Hospital, Kandana comes under the supervision of the Colombo North Teaching Hospital of Ragama and all the records of the Petitioner's service are kept with the said Ragama Teaching Hospital.

The Petitioner alleges that these records are under the direct purview of the 2<sup>nd</sup> Respondent. It is alleged that the release of these records was requested by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents [P7(a) and P7(b)]. It is further alleged that although the 5<sup>th</sup> Respondent had directed the Petitioner to be reinstated at his previous work place at District Hospital, Kandana [P8], the 2<sup>nd</sup> Respondent has failed to consider this direction. The Petitioner claims that there is a history of animosity towards the Petitioner by the 2<sup>nd</sup> Respondent. He goes onto specify details of it at paragraph 14 of the Petition.

Notices on all the Respondents were dispatched by registered post on 05.07.2015, 06.06.2018 and 17.08.2018. Objections have been filed only on behalf of the 5<sup>th</sup> Respondent.

According to the then holder of office of the 5<sup>th</sup> Respondent, there were several complaints against the Petitioner made by the other staff members of the hospital in relation to various incidents. The incident on 30.11.2016 and other related complaints were considered by the District Medical Officer of the Kandana Hospital and a report dated 03.12.2016 was submitted to the Director, Teaching Hospital, Ragama.

The Director, Teaching Hospital, Ragama, by letter dated 07.12.2016 [5R3] submitted a copy of the report dated 03.12.2016 and another report dated 06.07.2015 to the Director General of Health Services in relation to another complaint received against the Petitioner.

Thereafter, steps were taken to transfer the Petitioner by letters dated 07.12.2016 [5R3(a)] and 08.12.2016 [5R3(b) and P6]. Due to appeals made by the Petitioner, the transfer orders marked 5R3(a) and 5R3(b) were subsequently changed by letters dated 09.12.2016 [5R4(a)] and 19.12.2016 [5R4(b)] and the Petitioner was transferred to the Medical Supplies Division.

According to letter dated 08.12.2016 (P6), the 2<sup>nd</sup> Respondent transferred the Petitioner to the North Colombo Base Hospital, Mulleriyawa due to administrative reasons. Even the letter dated 07.12.2016 [5R3(a)] sent by the then Acting Director General of Health Services ordering the transfer of the Petitioner refers to administrative reasons as the grounds for the transfer.

However, the PSC Rules do not contemplate a transfer of a public officer on administrative grounds.

According to Rule 196 of the PSC Rules, transfers are four-fold. They are:

- (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.

Hence the impugned transfer of the Petitioner is *per se* flawed.

Nevertheless, in ***K. P. K. L. P. Maduwanthi v. S. M. G. K. Perera, District Secretary and Others*** [S.C. (F/R) 23/2021, S.C.M. 18.11.2022] I restated the established principle that as long as an authority has the power to do a thing, it does not matter if he purports to do it by reference to a wrong provision of law, and the order can always be justified by reference to the correct provision of law empowering the authority to make such an order. I went on to hold that the PSC Rules provided for the transfer of the Petitioner in the circumstances of that matter.

The Respondents categorically assert that the transfer of the Petitioner was not on disciplinary grounds. Neither was it an annual transfer nor a mutual transfer on requests made by public officers.

The Respondents submitted that the transfer was one made on exigencies of service. According to Rule 218 of the PSC Rules, a Public Officer may be transferred on exigencies of service by the Appointing Authority for any one of the following reasons:

- (i) Where the services of an officer are 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.

In *K. P. K. L. P. Maduwanthi v. S. M. G. K. Perera, District Secretary and Others* (supra.), the request to transfer the petitioner in that case was made to facilitate an investigation into alleged misconduct. I held that the conduct of such an investigation is part of the administrative functions of the Public Service and hence such a transfer was in accordance with the PSC Rules.

I observe that the 2<sup>nd</sup> Respondent has, in letter dated 07.12.2016 [5R3] made a request to the 5<sup>th</sup> Respondent to transfer the Petitioner to a place outside his purview. It is further suggested that an inquiry be held in relation to several matters referred to therein including the incident on 30.11.2016.

The Acting Director General of Health Services had made a minute dated 07.12.2016 thereon to transfer the Petitioner and hold an inquiry. Hence, it is arguable that the transfer given to the Petitioner falls within Rule 218 (iii) of the PSC Rules.

Nevertheless, no such inquiry had commenced by the time this application was filed on 12<sup>th</sup> May 2017. The affidavit of the then holder of office of the 5<sup>th</sup> Respondent filed in this case is dated 10<sup>th</sup> September 2019. It does not refer to any inquiry commenced or concluded as suggested by the Acting Director General of Health Services.

Hence, I am inclined to accept the submission made by Ms. Wijenarayana, learned counsel for the Petitioner that the transfer of the Petitioner was not to facilitate the conducting of an inquiry into the allegations made against the Petitioner.

This finding is supported upon an examination of the specific and detailed allegations of malice made against the 2<sup>nd</sup> Respondent by the Petitioner. The 2<sup>nd</sup> Respondent has failed to file an affidavit responding to these allegations though notice was served on him and being represented in the proceedings. This is further corroborated by the fact that the minute made by the then Director General of Health Services in P8 [dated 02.01.2017], directing that the Petitioner be reinstated at the previous hospital, has been disregarded.

The Petitioner was deprived of his salary for nearly four months allegedly due to his personal file not been sent to his new place of work. The salary arrears were paid only after this application was filed. The then holder of office of the 5<sup>th</sup> Respondent has not satisfactorily explained this except to claim that the matters referred to in P7(a) and P7(b) are ordinary matters that are involved in any transfer situation. It is a tragedy if the public service has fallen into such depths of inefficiency.

I can do no more than reiterate Rule 224 of the PSC Rules which reads as follows:

*“224. It shall be the responsibility of the former Head of the Department or Head of the Institution, as the case may be, to duly transmit the following documents regarding the officer to his new Head of Department or Head of Institution **within two weeks of the transfer of a Public Officer.***

- (i) Updated Personal File with the updated History Sheet;*
- (ii) Recommendation in respect of the period, from the date of the officer's last increment up to the date of implementation of the transfer, regarding the payment of the officer's next increment;*
- (iii) Performance Evaluation Report of the officer;*
- (iv) Leave particulars of the officer;*
- (v) Statement on Holiday Railway Warrants obtained by the officer;*
- (vi) Salary particulars of the officer;*
- (vii) Credit Balance Statement of the officer;*
- (viii) Report containing details of all foreign travel of the officer during his service;*



- (ix) *Report containing the details of all study courses, workshops and various conferences attended by the officer;*
- (x) *Other important documents relating to the officer.”* (emphasis added)

The 2<sup>nd</sup> Respondent has failed to comply with this requirement. This failure lends further credence to the specific allegations of malice made against him.

Moreover, the Petitioner was not provided with a copy of letter dated 07.12.2016 [5R3] when he was transferred due to administrative reasons. At a minimum, he was not even given sufficient details of the reasons leading to his transfer on exigencies of service. This becomes significant in view of Rule 221 of the PSC Rules which reads as:

*“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.**”*  
(emphasis added)

This is an important safeguard given to a Public Officer, and as the learned counsel for the Petitioner Ms. Wijenarayana correctly submitted, it must be read and understood in the context of Rules 230 and 231 of the PSC Rules which reads as follows:

*“230. In terms of Article 58 (1) of the Constitution any Public Officer aggrieved by an order relating to a promotion or transfer made by an Authority with Delegated Power in respect of the officer so aggrieved may appeal to the Commission against such order.*

*231. A Public Officer making an appeal against an order relating to a transfer or promotion to the Commission shall do so only as per Appendix 23. He shall also submit certified copies of the documents in support of his representation along with the appeal.”*

Item 03 of Appendix 23 of the PSC Rules requires a Public Officer aggrieved by a transfer to give “*reasons for making an appeal against the decision/order*”. Hence, in order to exercise the constitutional right given to a Public Officer to appeal against a transfer order, he must be made aware of the grounds of the transfer. Merely stating that it is made on administrative grounds is untenable in law.

It is important that the Petitioner was at a minimum given sufficient details of the reasons leading to his transfer on exigencies of service since the letter dated 07.12.2016 [5R3] refers to other matters dating back to 2015 in addition to the incident that took place on 30.11.2016.

In ***Dayasena v. Bindusara, Director, National Blood Transfusion Service and Others [(2003) 1 Sri.L.R. 222]***, Court was called upon to examine the legality of a transfer order. Fernando J. held (at page 227):

*“While the 2<sup>nd</sup> Respondent had authority to transfer the Petitioner on one or more of the grounds stated above, there is no proof that he did actually make a transfer order. Even assuming that he did make a transfer order, there is no evidence as to the basis on which he acted, and it cannot be assumed that it was on one of the four permitted grounds. But even if I were to assume that he did act on one of those grounds, yet that ground and the supporting reasons were not disclosed to the Petitioner when the transfer order was made, and even when his appeals were refused and that was a fatal flaw...In the present case, not only the reasons but even the ground had not been disclosed. I therefore hold that the Petitioner's transfer was wrongful and arbitrary.”*

For all the foregoing reasons, I make declaration that the failure to inform the Petitioner sufficient details to enable him to exercise his constitutional right of appeal against the impugned transfer and the failure to pay his salary for nearly four months is violative of his fundamental right to equality guaranteed under Article 12 (1) of the Constitution.

When this matter was taken up for argument and in the post-argument written submissions filed on behalf of the Petitioner, the learned counsel for the Petitioner informed that the Petitioner has now got acclimatized to his present workplace. Accordingly, we were informed that he does not wish to pursue the retransfer to the District Hospital, Kandana. The Petitioner instead sought a declaration that the Petitioner's fundamental rights guaranteed to him under Article 12 (1) and any other equitable relief under Article 126 (4) or relief to protect and advance the fundamental rights of the Petitioner under Article 118 (b) read with Article 4 (d) of the Constitution and/or compensation/costs that Court may deem fit.

The transfer of the Petitioner was made by the then Acting Director General of Health Services who has not been made a party to this application. Hence, no order for compensation can be made against him.

The objections filed by the then holder of office of the 5<sup>th</sup> Respondent shows that there were serious concerns about the conduct of the Petitioner prior to the incident on 30.11.2016. Although these matters were brought to the attention of the Ministry of Health, no action appears to have been taken. Taking into consideration all these matters, I am not inclined to award any compensation for the infringement of Article 12 (1) due to the failure to inform the Petitioner sufficient details to enable him to exercise his constitutional right of appeal against the impugned transfer.

Nevertheless, such considerations do not apply to the failure to pay the Petitioner his salary for nearly four months. This was brought about due to the failure on the part of the 2<sup>nd</sup> Respondent to comply with Rule 224 of the PSC Rules. I therefore order the 2<sup>nd</sup> Respondent to pay the Petitioner a sum of Rs. 25,000/= as compensation from his personal funds. This must be paid within one month of this judgment.

Furthermore, the State shall pay Rs. 25,000/= as costs to the Petitioner within one month of this judgment.

**Judge of the Supreme Court**

**Murdu N. B. Fernando, PC, J.**

I agree.

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree.

**Judge of the Supreme Court**