

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

SC.Appeal No.102/12

SC. Spl. LA No.58/2012

D.C.Homagama Case No.764/M

Court of Appeal No.

CA. 1184/02(F)

T.G.Nandadasa

No.128/1 Moragahalanda Road,
Arawwala, Pannipitiya.

Plaintiff-Respondent-Petitioner

Vs.

1. V.S. Kudaligama
Secretary, Ministry of Education,
Isurupaya,
Battaramulla.
2. K.U. Artygalla
Director of the Western Province,
Education Department,
Colombo.
3. Parakrama Randeniya
Asst. Director Education,
Education Office,
Homagama.
4. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Defendant-Appellant-Respondents

BEFORE : **SISIRA J. DE ABREW, J.**
UPALY ABEYRATHNE, J. &
ANIL GOONERATNE, J.

COUNSEL : Ranjan Suwandaradne for the Plaintiff-
Respondent-Appellant.
Milinda Goonatillake, DSG, for the Defendant-
Appellant-Respondents.

ARGUED &
DECIDED ON : 19/01/2017

SISIRA J. DE ABREW, J.

Heard both Learned Counsel in support of their respective cases. The Plaintiff in this case filed an action in the District Court challenging his transfer. In the District Court, the Plaintiff has raised an issue to the effect whether the Plaintiff from the beginning of his service up to the date of institution of this action was an assistant teacher.

The Learned District Judge has answered this issue in the affirmative. The Plaintiff did not file an appeal against the said order of the District Judge. Therefore, the Plaintiff has admitted that from the date of his appointment to the date of institution of this action he was an assistant teacher.

The Plaintiff was, by letter dated 30/01/1989, transferred to Thalpathpitiya Siddhartha Maha Vidyalaya as an assistant teacher. The Plaintiff challenged the said transfer in the District Court. The Learned

District Judge by judgment dated 20/08/2002 held in favour of the Plaintiff.

Being aggrieved by the said judgment, the Respondents appealed to the Court of Appeal. The Court of Appeal by judgment dated 17/02/2012 set aside the judgment of the District Judge and dismissed the Plaintiff's action. Being aggrieved by the said judgment of the Court of Appeal, the Plaintiff-Respondent-Petitioner-Appellant (hereinafter referred to as the Plaintiff-Appellant) has filed this appeal. This Court by order dated 07/06/2012 granted Leave to Appeal on questions of Law set out in paragraph 31(a), (b) and (c) which are set out below,

- a Has the Court of Appeal in arriving at the said judgment failed to consider the detailed evidence given at the trial and thereby finally arrived at a finding which cannot be supported by the evidence led at the trial in the District Court.
- b. Has the Court of Appeal misdirected with regard to the *per se ultra vires* decision taken by the 1st Respondent in transferring the Petitioner.
- c. Has the Court of Appeal failed to consider the fact that when a decision is *per se ultra vires* and is made without jurisdiction or a decision is malicious the provisions of Article 55(5) of the Constitution cannot be considered as a bar for the institution of damages action by an affected party in arriving at his final conclusion.

Learned Counsel appearing for the Plaintiff-Appellant submits that the person who made the transfer by letter marked "P3" has no authority to

do so. Learned Judges of the Court of Appeal have made the following observations.

“If the Plaintiff is to challenge the document dated 13/01/1998 the Plaintiff should resort to an administrative action”.

The Plaintiff-Appellant was transferred by letter dated 13/01/1998. The most important question that must be decided in this case is whether, the District Court has jurisdiction to make any declaration with regard to the transfer of the Plaintiff-Appellant. The Plaintiff-Appellant is a Public Servant.

In answering this question, I would like to consider Article 55 (5) of the Constitution which was in operation at the time that the learned District Judge gave the judgment. Article 55 (5) reads as follows:

“Subject to the jurisdiction conferred on the Supreme Court under paragraph (1) of Article 126 no court or tribunal shall have power or jurisdiction to inquire into, pronounce upon or in any manner call in question, any order or decision of the Cabinet of Ministers, a Minister, the Public Service Commission, a Committee of the Public Service Commission or of a public officer, in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a public officer”.

When we consider the above Article we are of the opinion that the District Court has no jurisdiction to make any declaration with regard to the transfer of the Plaintiff. This view is supported by the judicial decision in ***Chandrasiri Vs. Attorney General, 1989 1SLR page 115*** wherein this court held thus,

“ The District Court has no jurisdiction to inquire into, pronounce or otherwise call in question the dismissal of the Appellant.”

Considering the above legal literature, we hold that the Learned District Judge did not have jurisdiction to make any declaration with regard to the transfer of the Plaintiff.

Considering all the aforementioned matters, we answer the 3rd question of law in the negative. In view of the conclusion reached above, the 1st and the 2nd questions of law do not arise for consideration.

Considering all the aforementioned matters, we affirm the judgment of the Court of Appeal dated 17/02/2012 and dismiss the Appeal of the Plaintiff with costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ANIL GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

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