

**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 the
Democratic Socialist Republic of Sri Lanka.

Jayaweera Sumedha Jayaweera,
Deputy Principal's Residence,
Royal College,
Colombo 07

Petitioner

Vs.

S.C. F.R. Application No. 484/2011

1. Prof. Dayasiri Fernando,
Former Chairman.
**1A. Dharmasena Disanayake
Chairman**
2. Sirima Wijeratne,
Former Member.
**2A. Salam Abdul Waid,
Member.**
3. Palitha Kumarasinghe,
Former Member
**3A. D. Shirantha Wijeyatilaka,
Member.**
4. S.C. Mannapperuma,
Former Member
**4A. Prathap Ramanujam
Member**
5. Ananda Seneviratne,
Former Member.
**5A. Mr. E. Jegarasasingam,
Member**
6. N.H., Pathirana,
Former Member,
6A. Santi Nihal Seneviratne,
7. S. Thillanadarajh,
Former Member,
**7A. S. Ranugge,
Member**
8. M.D.W. Ariyawansa,
Former Member,

**8A. D.L. Mendis,
Member**

9. A. Mohamed Nahiya,
Member.

**9A. Sarath Jayathilaka,
Member**

All of the Public Service Commission,
No. 177,
Nawala Road,
Narahenpita,
Colombo 5.

10. H.M.Gunasekara,
The Secretary,
Ministry of Education,
Isurupaya,
Battaramulla

10A. Gotabaya Jayarathne,
The Secretary,
Isurupaya,
Battaramulla

10B. Upali Marasinghe,
The Secretary,
Ministry of Education,
Isurupaya,
Battaramulla

10C. Mr. B.W.M. Bandusena,
The Secretary,
Ministry of Education,
Isurupaya,
Battaramulla

**10D. Sunil Hettiarachchi,
The Secretary, Ministry of Education,
Isurupaya, Battaramulla.**

The Hon. Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

BEFORE : K. Sripavan, C.J.
B.P. Aluwihare, P.C., J.
Priyantha Jayawardena, P.C., J.

COUNSEL Manohara De Silva, P.C. with Ms. Anusha Perusinghe

and Thrishana Potupitiya for the Petitioner.

Sanjay Rajaratnam, P.C., Additional Solicitor General for
the Attorney General.

WRITTEN SUBMISSIONS : 20.12.2016 by the Petitioner
07.12.2016 by the Respondents

ARGUED ON : 30.11.2016

DECIDED ON : **16.01.2017**

K. SRIPAVAN, C.J.,

The Petitioner invoked the jurisdiction of this Court on the basis that her two transfers out of Royal College were effected by the 10th Respondent contrary to the transfer scheme approved by the Public Service Commission. Leave to proceed was granted on 02.12.2011 for the alleged violation of the Petitioner's fundamental right enshrined in Article 12(1) of the Constitution.

The Petitioner sought, inter alia, declarations

- (a) that the decision of the 10th Respondent to transfer the Petitioner to Gampaha Bandaranayake Vidyalaya contained in the letter dated 27.09.2011 marked **P10** is null and void; and
- (b) that the decision of the 10th Respondent to transfer the Petitioner to the Ministry of Education contained in the letter dated 28.09.2011 marked **P11** is null and void.

Though several parties filed Petitions to intervene in this application, all parties withdrew their applications for intervention on 13.05.2013 as the Court directed that the entire application be confined to the original Petition dated 18.10.2011.

The procedural Rules of the Public Service Commission published in the Government Gazette (Extraordinary) No. 1589/30 dated 20th February 2009 deals with the types of transfers that could be effected. Clause 196 of the said Rules reads thus :

“Transfers are fourfold 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.”*

It was not in dispute that the Petitioner was initially transferred by **P10** to Gampaha Bandaranayake Vidyalaya and the next day to the Ministry of Education by **P11**. None of the transfer orders convey any reasons to the Petitioner for such transfers as contemplated in Clauses 221 and 222 of the Procedural Rules. 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)

When leave to proceed was granted on 02.12.2011, this Court made the following observations :

*“ If the transfer is on “exigencies of service” or a “transfer on disciplinary grounds” in terms of Rules 221 and/or 222, the appointing authority is mandated to convey the reasons for such transfers in writing to the Officer concerned. The documents marked **P10** and **P11** do not give any reasons.*

They do not disclose the grounds upon which such transfers were made.....

.....
Since the Petitioner has now preferred an appeal to the Public Service Commission on the impugned transfer the Public Service Commission is free to take a decision on the appeal made by the Petitioner. ...”

However, the Public Service Commission having considered the appeal made by the Petitioner, made the following determination as evidenced by the Document marked **10R3**

“Admittedly, the Secretary to the Ministry of Education has acted contrary to the Public Service Commission’s Rules and failed to give reasons for the said transfer, which is not a transfer made on Annual Transfer Scheme. One of the complaints made by several Teachers of Royal College at Preliminary Investigation referred to below is that the Ministry of Education has failed to implement the transfer scheme in a meaningful manner.

In fact, the reasons for the transfer were given to the Public Service Commission very much later (after several reminders)

Taking all matters into consideration, we have no hesitation in coming to the conclusion that the transfer ordered by letters dated 27th September 2011 and 28th September 2011 is ex facie wrongful and contrary to the Public Service Commission Rules in respect of transfers of Public Officers.”

The Petitioner’s appeal to the Public Service Commission was decided in her favour in as much as the said Commission held that the said transfer orders were bad in law and pro forma set aside the said orders; however, the Public Service Commission refused to transfer the Petitioner back to Royal College. As a general rule, the rights of parties must be determined as at the commencement of the action. Thus, the Petitioner is entitled for the declarations sought in the prayer to the Petition.

Learned President’s Counsel for the Petitioners submitted that the Petitioner is now functioning as the Acting Principal of St. Paul’s College, Milagiriya and does not seek an

order of re-transfer to Royal College. The Court therefore holds that the decision of the 10th Respondent to transfer the Petitioner to Gampaha Bandaranayake Vidyalaya by letter dated 27.09.2011 marked **P10** and the subsequent decision of the 10th Respondent to transfer the Petitioner to the Ministry of Education by letter dated 28.09.2011 marked **P11** are null and void and has no force or avail.

The Court further declares that the Petitioner's fundamental rights guaranteed by Article 12(1) of the Constitution was infringed by the 10th Respondent. At the hearing before us, learned President's Counsel for the Petitioner indicated to Court that the Petitioner is not seeking compensation against the Respondents. Accordingly, no compensation is awarded against the Respondents.

CHIEF JUSTICE.

B.ALUWIHARE, P.C., J

I agree

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENE, P.C.,J.

I agree

JUDGE OF THE SUPREME COURT

