

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

In the matter of an Application under and in terms of Article 126 read with Article 17 of the Constitution.

B.W.W.K. Bogamuwa
No. 622/31, Stage II,
New Town,
Anuradhapura.

Petitioner

Application No. SC FR 286/2023

v.

1. J.H. Weeraratne
Director Education (Teacher Transfers)
2. S.N. Malaviarachchi
Additional Secretary (School Affairs)
3. M.N. Ranasinghe
Secretary
- 3A. Wasantha Perera
Secretary
- 3B. K.M.G.S. Nalaka Kaluwewe
Secretary

All of:
Ministry of Education,
Isurupaya, Battaramulla.

4. E.M.N.W. Ekanayake
Director of Provincial Education

5. Ms. Nilani
Administrative Officer

6. M.M. Hettiarachchi
Zonal Director of Education –
Anuradhapura

All of:

Provincial Department of Education
North Central Province,
Anuradhapura

7. R.A.C.A.K. Ratnayake
Principal
Swarnapali Balika Maha Vidyalaya,
Anuradhapura

8. Manjula Thilakaratne
Sectional Head – Grade 9
Swarnapali Balika Maha Vidyalaya,
Anuradhapura

9. J.A. Ranjith
Chairman

10. A.K.W.W.M.N.K. Weerasekara
Member

11. W.M.N.J. Pushpakumara
Member

12. A.W.R. Wimalaweera
Secretary

All of:
Education Service Committee of the
Public Service Commission,
No. 1200/9,
Rajamalwatta Rd, Battaramulla.

13. Sanath J. Ediriweera
Chairman

14. S.M. Mohamed
Member

15. N.H.M Chitrananda
Member

15A. Dr. (Eng) Sanath Panawennage
Member

16. M.B.R. Pushpakumara
Member

17. Prof. N. Selvakumaran
Member

18. Dr. A.D.N. de Zoysa
Member

19. R. Nadarajapillai
Member

20. C. Pallegama
Member

21. G.S.A. de Silva, PC
Member

22. W.H.M.M.C.K. Dayaratne
Secretary

All of:
Public Service Commission,
No. 1200/9,
Rajamalwatta Rd, Battaramulla.

23. Honourable Attorney-General
Attorney-General's Department
Hulftsdorp Street,
Colombo 12.

24. H.M.A. Kamalasiri
SOS Village Anuradhapura
D.S. Senanayake Mawatha,
Dahaiyagama,
Anuradhapura

25. Sujeewa Dissanayake
SOS Village Anuradhapura
D.S. Senanayake Mawatha,
Dahaiyagama,
Anuradhapura

Respondents

Before: Justice Yasantha Kodagoda, PC
Justice Kumudini Wickremasinghe
Justice Dr. Sobhitha Rajakaruna

Appearance: Nilshantha Sirimanne with Deshara Goonetilleke, instructed
by S.W. Amila Kumara for the Petitioner.

Kanishka de Silva Balapatabendi, Deputy Solicitor General for the 1st to 23rd Respondents.

Pulasthi Hewamanne with Harini Jayawardhana and Fadhila Fairoze, instructed by Niluka Dissanayake for the 24th and 25th Respondents.

Written Submissions: For the Petitioner: Pre-hearing written submissions on 27th May 2025 and Post-hearing written submissions on 25th September 2025.

For the 1st to 23rd Respondents: Pre-hearing written submissions on 16th May 2025 and Post-hearing written submissions on 25th August 2025.

For the 24th and 25th Respondents: Pre-hearing written submissions on 26th May 2025 and Post-hearing written submissions on 29th September 2025.

Hearing on: 4th August 2025

Judgment delivered on: 27th March 2026

JUDGMENT

Yasantha Kodagoda, PC, J.

Preliminaries

1. By filing a Petition dated 22nd November 2023 taking the manifestation of a ‘Fundamental Rights Application’, the Petitioner invoked the jurisdiction vested in this Court by Article 126 read with Article 17 of the Constitution. On 20th November 2024, following the support of the Petition, a partly different bench of this Court granted *leave to proceed* to the Petitioner to continue to pursue the Fundamental Rights Application. Furthermore, the Court granted interim relief, which in effect restored the status quo of the Petitioner to the situation which prevailed immediately prior to the issuance of the impugned ‘transfer order’ referred to more-fully in this Judgment. That interim order remained in force until the delivery of this Judgment.

Complaint of the Petitioner

2. At the time of the issuance of the 'transfer order' impugned in this Application, the Petitioner being a public servant, was functioning as a Graduate Teacher attached to the Swarnapali Balika Maha Vidyalaya in Anuradhapura. He taught the subject of Accounts to students of Advanced Level classes. This public school has been administratively assigned to the Government, as opposed to the North Central Province, and therefore is referred to as a 'National School'. By letter dated 11th October 2023 ("P9"), the 1st Respondent, who at that time functioned as the Director of Education (Teacher Transfers) of the Ministry of Education of the Government, directed the transfer of the Petitioner from that school to the Maithripala Senanayake Madya Maha Vidyalaya (Central College) in Medawachchiya. In view of the interim order issued by this Court, the Petitioner, who had before filing the action complied with the transfer order, was able to revert to teaching at the Swarnapali Balika Maha Vidyalaya. It is the afore-stated transfer order that the Petitioner canvassed before this Court.

3. The Petitioner impugned his transfer on the following grounds:
 - i. That the 1st and 2nd Respondents did not possess legal authority to issue the impugned transfer order.
 - ii. That the impugned transfer was carried out contrary to the applicable Rules of the Public Service Commission.
 - iii. That the impugned transfer was decided upon without affording the Petitioner a full and fair hearing relating to the allegation against him.
 - iv. That the impugned transfer order had been prompted by ulterior motives (extraneous reasons) and/or was *mala fide*.

4. Giving some contextual background to the impugned transfer, the Petitioner has provided the following narrative:
 - i. In 2010, following the completion of his undergraduate education, the Petitioner gained admission to the 'Sri Lanka Parivenacharya Service' [a Service of the Government in the field of education comprising of teachers who teach at a 'Pirivena' (educational institutions primarily for pupil Buddhist monks)] and received a "Grade 3-1" appointment ["P3(a)" and "P3(b)"].
 - ii. The Petitioner taught the subjects of Commerce and Accounting at the Sri Dhammaratana Vidyathana Pirivena ["P3(c)" and "P3(d)"].

- iii. With effect from June 2014, the Provincial Public Service of the North Central Province appointed the Petitioner as a 'Graduate Teacher Apprentice' ["P4(a)"]. In that capacity, the Petitioner served at the Kadurupitiya Ashokamala Vidyalaya ["P4(d)"].
- iv. With effect from December 2014, the Petitioner was appointed as a 'Graduate Teacher' and was admitted to "Grade 3-1" of the 'Sri Lanka Teachers' Service' and was posted to the Anuradhapura Education Zone [P4(b)].
- v. In December 2017, the Petitioner was promoted to "Grade 2-II" of the Sri Lanka Teachers' Service ["P4(e)"].
- vi. By a letter dated 6th June 2018, the Department of Education of the North Central Province confirmed the service of the Petitioner ["P4(c)"].
- vii. By a letter dated 18th November 2022 issued by the 3rd Respondent - Secretary to the Ministry of Education ["LCA-1"], the Petitioner was released by the North Central Provincial Public Service to the National School Service on the premise that the Petitioner was required to teach the subject of Accounting at the Swarnapali Balika Maha Vidyalaya.
- viii. In November 2022, a process commenced for the release of the Petitioner from the Provincial Public Service to the National School Service ["CA-4", "CA-5" and "P5(a)"]. Thereafter, signaling the formalizing of the release, in June 2023, the Petitioner was transferred from the Maha Bulankulama Maha Vidyalaya (a Provincial School) to the Swarnapali Balika Maha Vidyalaya (which is a National School) to teach the subject of Accounts ["P5(b)" and "P8"]. The said transfer order required the Petitioner to serve the Swarnapali Balika Maha Vidyalaya for a minimum of five (5) years. Accordingly, the Petitioner assumed duties at that school on 14th June 2023 ["P8(b)"]. By this time, the Petitioner was elevated to the level of a 'Grade 2-II' teacher of the Sri Lanka Teachers' Service.
- ix. The Petitioner understands that he was transferred to the Swarnapali Balika Maha Vidyalaya in June 2023 to replace Ashoka Gunasena who had been teaching the subject of Accounts for Advanced Level students, and was due to retire in September 2024.
- x. At Swarnapali Balika Maha Vidyalaya, the Petitioner started teaching the subject of Accounts to Advanced Level students. He was also required to undertake 'relief classes' to teach subjects such as Mathematics to students of Grades 6 to 11, whenever the teacher assigned for the subject was absent.

- xi. It is in this backdrop that the Petitioner, having served 4 months at the Swarnapali Balika Maha Vidyalaya, had received “P9” (transfer order contained in letter dated 11th October 2023).
5. “P9” refers to a recommendation made by the Provincial Director of Education of the North Central Province (contained in his letter dated 26th September 2023) to the Secretary to the Ministry of Education, which states that based on ‘exigencies of service’, the Petitioner with immediate effect was being transferred to Maithripala Senanayake Madya Maha Vidyalaya to teach subjects in the commerce stream of that school. “P9” had been issued by the 1st Respondent (J.H. Weeraratne, Director of Education (Teacher Transfers), Ministry of Education) and counter-signed by the 2nd Respondent (S.N. Malaviarachchi, (Additional Secretary (School Affairs), Ministry of Education).
6. Under protest, the Petitioner complied with the transfer order (impugned) [“P13”].
7. By letters dated 27th October 2023 [“P11(a)”] and 6th November 2023 [“P11(b)”] addressed to the Secretary to the Ministry of Education, the Petitioner appealed against the afore-stated transfer order, for which he did not receive a response.
8. **Petitioner’s assumption of the reason for the impugned transfer** – According to the Petitioner, it is the following events that had resulted in the afore-stated transfer:
 - i. The Petitioner had been a popular teacher in the subject of Accounts for Advanced Level students. This had resulted in the Petitioner developing a reputation as a good teacher and attracting a large number of students to his private tuition classes.
 - ii. In this backdrop, some parents of the Grade 9 students of Swarnapali Balika Maha Vidyalaya had approached him and requested that a private tuition class in the subject of Mathematics be conducted for a small group of students. The Petitioner had acceded to this request, and accordingly, he had started to conduct a private tuition class for the children of those parents. The class was conducted at a hall of the ‘SOS Children’s Village’ situated in Dahaiyagama in Anuradhapura. One child who attended that class was Chanthuli Kamalasiri (the daughter of the 24th and 25th Respondents). The 24th Respondent, being the father of the afore-stated

- child, was the Director of the SOS Children's Village, and had arranged the venue for the tuition class. No fees were charged from the students.
- iii. In September 2023, the 7th Respondent (Principal, Swarnapali Balika Maha Vidyalaya) informed the Petitioner that she had received a complaint against him, alleging that he was being overtly friendly with some students of Grade 9 including in particular with Chanthuli Kamalasiri. The 7th Respondent asked the Petitioner to stop conducting tuition classes for Grade 9 students and to leave the school. The Petitioner denied any wrongdoing and refused to either stop conducting the tuition class in issue or leave the school.
 - iv. The Petitioner got to know that the 7th Respondent with the assistance of the 8th Respondent (Sectional Head of Grade 9, Swarnapali Balika Maha Vidyalaya) had initiated a process aimed at getting some Grade 9 students to make false statements against him. The Petitioner verily believes that this had been aimed at orchestrating the removal of the Petitioner from Swarnapali Balika Maha Vidyalaya.

Position of the 24th and 25th Respondents

9. Submitting an Affidavit on behalf of herself and the 24th Respondent, the 25th Respondent by her Affidavit dated 26th May 2025, has explained that her husband is the Director of the SOS Children's Village in Anuradhapura. Their daughter Resandi Chanthuli Herath (a 14 years-old child at the time of the incident) is a student of Swarnapali Balika Maha Vidyalaya and was due to sit for the G.C.E. (O/L) Examination in 2025. At school, the Petitioner had taught Mathematics to their daughter when she was in Grade 9. She and her husband had requested the Petitioner to give private tuition in Mathematics to their daughter and for two other friends of hers. The Petitioner had acceded to this request and in June 2023, tuition classes had been held in the 'Activity Room' of the SOS Village Staff Quarters. Those working in the SOS Village had frequent access to this room, and the tuition classes had been held in their presence. While conducting classes, the Petitioner had not engaged in any inappropriate behaviour towards Chanthuli or any of the other students.
10. Based on information provided to her by her daughter Chanthuli, the 25th Respondent has adverted to the following sequence of events:
 - i. On 13th September 2023, Chanthunli had been summoned by the 7th Respondent (Principal, Swarnapali Balika Vidyalaya) to be present at the

principal's office once school ended. Chanthuli had complied. When she went to meet the 7th Respondent, the 8th Respondent (Sectional Head, Swarnapali Balika Maha Vidyalaya) had also been present. The other girls who attended the tuition class – Samithi and Janani and one other student were present at the office of the 7th Respondent and were seen writing something on sheets of paper.

- ii. The 7th Respondent had inquired whether she was in a relationship with the Petitioner, to which question she had responded in the negative. The 7th Respondent had thereafter insisted that Chanthuli admits the allegation and both the 7th and the 8th Respondents have expressed anger at Chanthuli's persistent denials.
- iii. The 8th Respondent had demanded that Chanthuli writes on paper a statement in terms of what would be dictated by him. She had refrained from doing that and instead of that had written that she was not in a relationship with the Petitioner. However, she had given an undertaking that she will hitherto refrain from talking with the Petitioner.
- iv. The three students had been threatened by the 7th and 8th Respondents not to reveal to their parents what had taken place and had been told that if they did so, they will be dismissed from the school.
- v. Upon returning home, Chanthuli who was visibly distressed, had revealed the afore-stated incident that had transpired at the office of the 7th Respondent.

11. Subsequently, the 24th and 25th Respondents had spoken to Samithi, who had told them that the 7th and 8th Respondents had threatened her to implicate the Petitioner as having an affair with Chanthuli.

12. They had also met and spoken to the 7th and 8th Respondents. The 7th Respondent had told them that she had received anonymous petitions alleging that the Petitioner was in a relationship with Chanthuli and that accordingly, she had investigated into the matter. The 8th Respondent had said that other children had confirmed that the Petitioner was in a relationship with Chanthuli.

13. According to the 25th Respondent, following this incident, Chanthuli had been harassed in school by certain members of the staff and marginalized. Consequent to which Chanthuli had been seriously traumatised and had refused to attend school. She had also expressed suicidal thoughts to her brother.

Explanation for the impugned transfer of the Petitioner provided on behalf of the 1st to 23rd Respondents

14. The 3A Respondent (Wasantha Perera, then Secretary, Ministry of Education) by her Affidavit dated 13th March 2024 and the holder of the office of the 3rd Respondent (K.M.G.S. Nalaka Kaluwewe, Secretary to the Ministry of Education) by his Affidavit dated 29th January 2025, have provided the following detailed explanations:

- a. That an examination of the relevant documentation reveals that in January 2015, the Petitioner had been appointed as a 'Graduate Teacher' of the 'Teachers' Service of the North Central Province' ["P4(b)"].
- b. That the Petitioner was never absorbed into the 'Sri Lanka Teachers' Service'. Therefore, the Petitioner continues to be in the 'Teachers' Service of the North Central Province'.
- c. That all teachers assigned or transferred to a National School must necessarily belong to the 'Sri Lanka Teachers' Service' [*vide* Minute of the Sri Lanka Teachers Service - "3R1"].
- d. That the initial transfer of the Petitioner to Swarnapali Balika Maha Vidyalaya had been due to a "*misconception that he belonged to the Sri Lanka Teachers Service and inadvertence as in any event there were no vacancy at the time of the said transfer*".
- e. Following the transfer to Swarnapali Balika Maha Vidyalaya, the Petitioner "*did not have a permanent timetable and was instead only covering the duties of teachers who were absent*" ["3R2" and "3R3"].
- f. That the transfer of the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Maha Vidyalaya by "P9" was lawful and was due to "*exigencies of service*". [In support of this position, the 3rd Respondent has annexed to his Affidavit a letter dated 14th February 2024 ("3R4") forwarded to him by the 7th Respondent (Principal, Swarnapali Balika Maha Vidyalaya).]
- g. That the transfer of the Petitioner was not occasioned due to any reason adduced by the Petitioner.

15. By her Affidavit dated 4th November 2024, the 22nd Respondent (Kumari Dayaratne, Secretary, Public Service Commission) has corroborated the position of the 3rd Respondent that with effect from 31st January 2015, as revealed by "P4(b)", the Petitioner had been appointed as a Graduate Teacher to the Teachers'

Service of the Provincial Public Service of the North Central Province. As a matter of principle, other than the several categories of teachers referred to in the Public Service Commission Circular No. 04/2020 ["X1 (i) - (iii)"], no teacher of a Provincial Public Service can be transferred to a National School. She stated that the Petitioner does not fall into any of these categories referred to in Circular No. 04/2020. In these circumstances, the 22nd Respondent has asserted that the Petitioner does not have a legitimate expectation of receiving a transfer to a National School. Therefore, the Petitioner's 'transfer' to Swarnapali Balika Maha Vidyalaya (which is a National School) has been an 'irregularity' and therefore, upon being detected, the Public Service Commission has directed the 3rd Respondent (by letter dated 30th October 2024 - "X2") to rectify this irregularity by transferring the Petitioner back to the Provincial Public Service with the concurrence of the relevant provincial authorities.

16. In her further Affidavit dated 28th March 2025, the 22nd Respondent has clarified that the Petitioner had never been absorbed to the 'Sri Lanka Teachers' Service'. Therefore, *vide* "X1 (i) - (iii)", the Petitioner is disentitled to obtain an appointment to a national school. Therefore, the 'transfer' of the Petitioner to a national school (namely, Swarnapali Balika Maha Vidyalaya) without a due appointment, had to be rectified and thus, with the approval of the relevant provincial authorities ["X2"] the Petitioner was "*sent back to serve in a provincial school*".

Submissions of Counsel

17. **Submissions made on behalf of the Petitioner** - Learned Counsel for the Petitioner submitted that "P9" had been issued without any legal authority and thus does not have any force of law. Explaining his position, he submitted that, in terms of Article 55(3) of the Constitution, the power to transfer officers of the public service has been vested in the Public Service Commission. Conceding that in terms of Articles 56 and 57, the Public Service Commission is empowered to delegate that power, learned Counsel submitted that in terms of item No. 7 of Schedule "A" of the Rules promulgated by the Public Service Commission [published in *Government Gazette (Extraordinary)* No. 2014/3 dated 11th April 2017 - "P15"], the power to effect 'all transfers including annual transfers according to the scheme approved by the Public Service Commission' of the "Teachers of Sri Lanka Teachers' Service under the Ministry of the Minister in charge of the subject of Education" had been delegated to the 'Secretary to the Ministry of the Minister in charge of the subject of Education / An Additional Secretary nominated by the

Secretary to the Ministry and approved by the Public Service Commission'. Due to this delegation, learned counsel for the Petitioner submitted that the impugned transfer order had not been issued by an officer who had the legal authority to issue such an order and was unlawful. Further, he submitted that the Affidavits filed on behalf of the 1st to 23rd Respondents do not reveal that the 3rd Respondent - Secretary to the Ministry of Education has even authorized the impugned transfer. Further, there was no evidence that either the 1st or the 2nd Respondents had been duly authorized by the 3rd Respondent (Secretary, Ministry of Education), and that such authorization had been approved by the Public Service Commission to exercise the power of transfer of teachers of the Sri Lanka Teachers' Service.

18. Learned Counsel citing procedural rules of the Public Service Commission pertaining to transfers, also submitted that, since the purported reason for the transfer was the exigencies of service, it was incumbent on the 1st and 2nd Respondents to have satisfied themselves of the existence of a ground which enables the authority vested with delegated authority to cause a transfer on exigencies of service (*vide* section 258 of the PSC Rules). Furthermore, the applicable ground should be stated in the transfer letter. Learned Counsel submitted that these requirements have also not been satisfied by the Respondents.
19. Learned Counsel for the Petitioner submitted that, if in fact the 7th Respondent had believed that the petition said to have been received by her contained truthful information which warranted disciplinary action to be taken against the Petitioner, she should have done so according to law. No such action had been taken. Furthermore, even up to the stage of the hearing, no such action had been initiated. He submitted that such inaction shows that the entire process had been initiated to get the Petitioner transferred out of Swarnapali Balika Maha Vidyalaya.
20. Learned Counsel also submitted that, notwithstanding the interim order made by the Supreme Court restoring the status quo ante "P9", the 7th Respondent had not given the Petitioner any teaching assignments and therefore he was "languishing" at Swarnapali Balika Maha Vidyalaya without teaching any subject. This is notwithstanding the fact that, at the time the Petitioner joined Swarnapali Balika Maha Vidyalaya, three (3) teachers including one Asoka Gunasena taught Accounts for Advanced Level students of the commerce stream. The Petitioner

was recruited to replace him, who was due to retire in September 2024. Subsequently, Asoka Gunasena had retired. Now, as the 7th Respondent has not given a teaching time table to the Petitioner, only two teachers teach the subject of Accounts to students of the Advanced Level commerce stream.

21. Learned Counsel concluded his submissions by stating that the afore-stated actions of the Respondents amounted to the Petitioner's fundamental right guaranteed under Article 12(1) of the Constitution being infringed.
22. **Submissions made on behalf of the 24th and 25th Respondents** - Learned Counsel for the 24th and 25th Respondents submitted as to how the 7th and 8th Respondents had handled the matter was contrary to the best interests of Chanthuli, was unlawful and that they had been bent on implicating the Petitioner as having engaged in serious wrongdoing, when both the Petitioner and Chanthuli were innocent. He also submitted that this incident had caused considerable suffering to the 24th and 25th Respondents. Citing several recent judgments of this Court, learned Counsel submitted that the 7th and 8th Respondents had handled the matter involving the alleged receipt of anonymous petitions implicating the Petitioner in a manner that infringed the fundamental rights of Chanthuli, and was contrary to the best interests of Chanthuli (which they were obliged to protect), unlawful and contrary to internationally recognized standards relating to the protection of children.
23. **Submissions made on behalf of the 1st to 23rd Respondents** - Learned Senior Deputy Solicitor General emphasized that, for all purposes, the Petitioner had remained in the Teachers' Service of the North Central Province, and had never been appointed or absorbed into the Sri Lanka Teachers' Service. Furthermore, the Petitioner did not have the required qualifications to be appointed to the Sri Lanka Teachers' Service. That is primarily because the Petitioner had not received training conducted by the Central Government. Furthermore, the Petitioner had not applied to join the Sri Lanka Teachers' Service, nor has the stipulated procedure been followed to absorb the Petitioner to the Sri Lanka Teachers' Service. Therefore, learned Senior DSG submitted that the Petitioner could not have entertained a legitimate expectation of ever being appointed to a 'National School' such as the Swarnapali Balika Maha Vidyalaya.

24. Learned Senior DSG also submitted that the initial appointment of the Petitioner to Swarnapali Balika Maha Vidyalaya had been both due to a *“misconception that he belonged to the Sri Lanka Teachers Service”* and due to an *“inadvertence”*. Learned Senior DSG insisted that the transfer of the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Vidyalaya was purely due to *“exigencies of the situation”*. She explained that at Swarnapali Balika Maha Vidyalaya, there were two (2) teachers to teach Accounts, and that was the approved cadre (*vide “3R4”*). Thus, the Petitioner was in excess of the approved cadre. Therefore, there was no requirement to retain the Petitioner at the said School. Therefore, she submitted that *“the transfer of the Petitioner out of Swarnapali Balika Maha Vidyalaya is rational, reasonable and was actuated by exigencies of service and in accordance with the Public Service Commission Rules”*. In that regard, learned Senior DSG drew the attention of this Court to Rule 258 of the PSC Rules, which provides that a public officer may be transferred on exigencies of service by the Appointing Authority or the authority with delegated power *inter alia* where the service of a public officer is no longer needed at his present duty station.
25. Learned Senior DSG insisted that the impugned transfer was not due to the reasons the Petitioner had alleged. Nevertheless, as contained in *“X2”*, consequent to the filing of this Application and the allegation against the Petitioner coming to light, the Public Service Commission had queried from the Ministry of Education as to why the allegation against the Petitioner had not been properly investigated.
26. Learned Senior DSG submitted further that Maithripala Senanayake Maha Vidyalaya is also a National School. Therefore, what the Petitioner was attempting to do was to obtain a judicial order preventing him being transferred from one National School to another National School. She submitted that in effect, what the Petitioner was attempting to do was to get an order from the Supreme Court that would tantamount to recognizing that the Petitioner belonged to the Sri Lanka Teachers’ Service, whereas he was not. She said that what the Petitioner was seeking to do was to perpetuate an illegality, since the Petitioner has no entitlement to serve in a National School and therefore has no right to remain in service at the Swarnapali Balika Maha Vidyalaya. Thus, learned Senior DSG submitted that *“the attempt by the Petitioner to masquerade as belonging to the National Sri Lanka Teachers Service is an attempt to perpetuate an illegal right which finds no place in the fundamental rights jurisprudence”*.

27. Due to the afore-stated reasons, learned Senior DSG urged for the Petition to be dismissed.

Analysis and Conclusions

28. The core issue to be adjudicated by this Court based upon which the outcome of this Fundamental Rights Application shall rest, is the lawfulness or otherwise of the decision taken to transfer the Petitioner from Swarnapali Balika Maha Vidyalaya in Anuradhapura to Maithripala Senanayake Madya Maha Vidyalaya in Medawachchiya. The impugned decision to transfer the Petitioner is contained in the letter dated 11th October 2023 issued by the Ministry of Education [signed physically by the 1st Respondent and co-signed (without signature) by the 2nd Respondent], addressed to the Petitioner and forwarded to him through the 7th Respondent [“P9”].

29. “P9” does not state that the decision to transfer the Petitioner was taken by the Public Service Commission or by the Secretary to the Ministry of Education. Nor have the 3rd Respondent (Secretary, Ministry of Education) nor the 22nd Respondent (Secretary, Public Service Commission) taken up that position. Thus, this Court arrives at the conclusion that the decision to transfer the Petitioner has been taken by the authors of “P9”.

30. “P9” captioned “*Transfer in the Sri Lanka Teachers Service - 2023*”, states that the transfer of the Petitioner is being made with immediate effect due to (a) a recommendation made by the Director of Education of the North Central Province to the Secretary to the Ministry of Education contained in the former’s letter dated 26th September 2023 bearing reference number “*NCP / ED / Paa03 / Disciplinary / Anu / Vi.Go.*” and (b) exigencies of service. Having specified certain ensuing action which the Petitioner is required to take, the letter contains in paragraph 4, another reference to the fact that the transfer is being made due to exigencies of the service.

31. As referred to earlier, learned Counsel for the Petitioner submitted that he was impugning “P9” on four (4) grounds. I shall consider each such ground separately.

32. **Did the 1st and 2nd Respondents possess legal authority to issue the afore-stated transfer order?** – It is not in dispute that in terms of Article 55(3) of the Constitution, unless otherwise provided, the power to transfer a public officer lies with the Public Service Commission. According to the Constitution itself (Article

57) this power can be delegated by the Public Service Commission. The related delegation of authority is contained in “P15”, which is a ‘Notification’ by the Public Service Commission, contained in *Gazette Extraordinary* dated 11th April 2017. “P15” is captioned “*Delegation of Powers by the Public Service Commission in terms of Article 57(1) of the Constitution*”. As per this Notification, Public Officers referred to in Column II of Schedule “A”, have been vested with the powers set out in Column III in respect of the category of officers referred to in Column I. Item No. 7 of Schedule “A” together with the corresponding title headings is as follows:

Column I <i>Category of Officers</i>	Column II <i>Public Officers to whom the powers are delegated</i>	Column III <i>Powers delegated</i>
Teachers of Sri Lanka Teachers Service under the Ministry of the Minister in charge of the subject of Education.	Secretary to the Ministry of the Minister in charge of the subject of Education.	I. Appointment and Promotion according to Schemes of Recruitment / Service Minutes approved by the Public Service Commission. II. Disciplinary control in respect of offences in the First Schedule in Chapter XLVIII of the Establishments Code and dismissal from service. III. Granting concessions on Efficiency Bar Examinations in terms of Public Service Commission Circular No. 3/2016.
	Secretary to the Ministry of the Minister in charge of the subject of Education / <u>An Additional Secretary nominated by the Secretary to the Ministry and approved by the Public Service Commission.</u>	I. Disciplinary control in respect of offences in the Second Schedule in Chapter XLVIII of the Establishments Code. II. <u>All transfers including annual transfers according to scheme approved by the Public Service Commission.</u>

[Emphasis added by me.]

33. It is thus seen that the Public Service Commission has vested the power to transfer (including effecting annual transfers) Teachers of the Sri Lanka Teachers’ Service

to the Secretary to the Ministry of Education and to an Additional Secretary nominated by the Secretary and approved by the Public Service Commission.

34. As stated previously, it is not in dispute that the decision to transfer the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya was not taken by the Secretary to the Ministry of Education (3rd Respondent). Nor is there any evidence that the 3rd Respondent authorized the Petitioner's transfer. Furthermore, "P9" has not been signed by the 3rd Respondent. As stated above, "P9" has been signed by the 1st Respondent [J.H. Weeraratne, Director of Education (Teacher Transfers)] who does not possess the authority to cause the transfer of Teachers of the Sri Lanka Teachers' Service. "P9" has been co-signed (without signature) by the 2nd Respondent [Additional Secretary (School Affairs), Ministry of Education]. The general practice relating to official communications by government officials is that, when a letter is in fact signed by a particular officer and is supposedly co-signed by another officer with only his name and designation being stated together with a typed endorsement "signed by" immediately above the name, it means that the relevant letter has been sent by the officer who actually signed the letter, but that it carries the authority of the second officer who is said to have co-signed the letter. Thus, it is reasonable to assume that though "P9" has been signed by the 1st Respondent, it carries the authority of the 2nd Respondent. Furthermore, he is an Additional Secretary. However, no evidence has been placed before this Court (even in the form of a mere averment contained in an affidavit of a Respondent) that the authority to cause the transfer of Teachers of the Sri Lanka Teachers' Service has been vested in the 2nd Respondent by the Public Service Commission on a nomination made by the 3rd Respondent (Secretary, Ministry of Education). In other words, the authority to transfer Teachers of the Sri Lanka Teachers' Service has not been delegated to the 2nd Respondent (Additional Secretary, Ministry of Education). Even in the submissions of the learned Senior DSG, she did not take up the position that the 2nd Respondent possessed delegated authority received from the Public Service Commission based on a nomination made by the 3rd Respondent. Thus, the authority to transfer Teachers of the Sri Lanka Teachers' Service is vested with the Public Service Commission and the Secretary to the Ministry of Education. In these circumstances, the only inference which this Court can arrive at is that neither the 1st nor the 2nd Respondents had the legal authority to take a decision to transfer the Petitioner. Therefore, I find myself in agreement with the submissions made in this regard by learned Counsel for the Petitioner.

35. In those circumstances, I conclude that neither the 1st nor 2nd Respondents possessed legal authority (jurisdiction) to direct the transfer of the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya. The authors of “P9” patently lacked jurisdiction to transfer the Petitioner. Therefore, I hold that “P9” contains a decision that is *ab initio void* and it thus carries no force in law and is unlawful.

36. **Was the impugned transfer carried out contrary to the applicable Rules of the Public Service Commission?** – The 3rd Respondent (both the officer who held the post of Secretary to the Ministry of Education at the time this Application was supported seeking *Leave to Proceed* and the holder of that office at the time Objections to the Application were filed) have categorically stated that the Petitioner was transferred from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya due to exigencies of the service. “P9” affirms that position. Indeed, section 246 of the Rules published by the Public Service Commission (published in *Government Gazette* No. 2310/29 dated 14th December 2022), recognizes ‘exigencies of service’ as one basis on which a public officer could be transferred from one duty station to another. According to section 258 of those Rules, the objectives that are to be achieved by a transfer on the basis of exigencies of services are as follows:

- i. Where the service of the public officer concerned is no longer needed at his present duty station.
- ii. Where a public officer is needed for service in another duty station or where the service of the relevant public 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.

37. Furthermore, according to section 262, the transferring authority (with requisite authority to cause the transfer) should (a) satisfy himself of such requirement, (b) record the reasons that led for the transfer in the relevant file, and (c) should clearly state such reasons for the transfer letter being issued to the public officer being transferred.

38. Though “P9” states that the type of transfer is one based on ‘exigencies of service’, as pointed out by learned Counsel for the Petitioner, it does not state the reasons which led the transferring authority to have arrived at a finding that exigencies of

the service necessitated the Petitioner to be transferred from Swarnapali Balika Maha Vidyalaya. While “P9” contains a reference to a letter dated 11th October 2023 bearing reference “NCP/ED/Paa03/Disciplinary/Anu/Vi.Go.”, and the learned Counsel for the Petitioner insisting that it be produced, particularly due to the word “Disciplinary” appearing thereon and therefore alleging that the Petitioner had been transferred not due to ‘exigencies of the service’ but due to the allegation of misconduct with a student of the school, no attempt was made by the 3rd Respondent or on his behalf to produce that letter or extracts of the relevant file to justify the assertion that the Petitioner was transferred out of Swarnapali Balika Maha Vidyalaya since he was idling at that school without even a permanent teaching time-table and because his services were required at Maithripala Senanayake Madya Maha Vidyalaya. If in fact the 1st Respondent had informed the 3rd Respondent (either directly or through the Provincial Director of Education) that the services of the Petitioner was no longer necessary at Swarnapali Balika Maha Vidyalaya, and the Principal of Maithripala Senanayake Madya Maha Vidyalaya had requested either the 3rd Respondent or the provincial educational authorities of the need for an Advanced Level teacher to teach the subject ‘Commerce’, there ought to have been no difficulty for the 3rd Respondent to produce copies of those letters as exhibits along with his Affidavit. That was also not done. In these circumstances, it is evident that the ground for the transfer contained in “P9” as being ‘exigencies of service’ is unacceptable and also contrary to the applicable Rules of the Public Service Commission. Accordingly, I hold that “P9” violates the standards contained in the afore-stated Rules of the Public Service Commission. Therefore, I treat the foregoing as a supplementary ground for holding that “P9” is unlawful.

39. Furthermore, particularly due to the reason that the 3rd Respondent did not produce letter dated 11th October 2023 bearing reference “NCP / ED / Paa03 / *Disciplinary* / Anu / Vi.Go.” (emphasis added) and the afore-stated inability on the part of the 3rd Respondent to justify with the aid of reliable and cogent evidence that the impugned transfer was in fact due to ‘exigencies of service’, I arrive at an inferential finding that the actual reason for the Petitioner’s transfer was not exigencies of the service, and was the allegation against him pertaining to alleged misconduct with Resandi Chanthuli Herath. In such circumstances, I conclude that the impugned transfer of the Petitioner was on ‘disciplinary grounds’.

40. **Was the impugned transfer decided upon without affording the Petitioner a full and fair hearing relating to the allegation against him?** – Admittedly, the Rules of the Public Service Commission pertaining to the transfer of a Public Officer on disciplinary grounds were not followed in the instant case. Even the learned Senior DSG conceded that disciplinary proceedings were not initiated against the Petitioner. Even to-date, this Court has not been informed of any disciplinary proceeding that had been taken against the Petitioner. In this regard, it is important to note that, either by way of an interim order or even an incidental requirement imposed by this Court, the Respondents were not barred from investigating into the veracity of the allegation against the Petitioner and / or taking disciplinary action against him. Thus, it is obvious to this Court that the actual reason for the transfer (that being the allegation of misconduct by the Petitioner) had been decided upon by the 7th and 8th Respondent without satisfying themselves of the truthfulness of the allegation against the Petitioner and affording the Petitioner with an opportunity of responding to that allegation (a fair hearing). However, I refrain from arriving at a finding on such failure giving rise to another basis for holding that “P9” is unlawful, since the 3rd and the 22nd Respondents did not take up the position that the transfer of the Petitioner was due to disciplinary grounds. In that regard, I note that there is no requirement contained in the applicable Rules of the Public Service Commission to give a fair hearing to a public officer prior to causing a transfer from one duty station to another on grounds of ‘expediency of service’.

41. **Was the impugned transfer order prompted by ulterior motives and / or was it a *mala fide* decision?** – Though the 1st and 2nd Respondents have not provided affidavit evidence to this Court, in my view, there is no evidential basis to conclude that they had entertained an ulterior motive and / or entertained *mala fides* when they decided to transfer the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya. In that regard, I have considered the fact that they did not even have any knowledge regarding the Petitioner and were mere officials of the Education Ministry performing administrative functions. That they acted unlawfully, ostensibly on a recommendation made to them by the 4th Respondent (Provincial Director of Education - North Central Province) does not thereby necessarily give rise to an interference (in the absence of cogent and reliable evidence) that they entertained a *mala fide* intent. It appears that they blindly acceded to a request from the 4th Respondent to transfer the Petitioner out of Swarnapali Maha Vidyalaya and found ‘exigencies of service’ as

a convenient collateral ground on which the request for the transfer could be implemented. While their conduct cannot be condoned, I refrain from arriving at a finding on collateral motives or *mala fide* intent on the part of the 1st and 2nd Respondent.

42. It also appears that the 4th Respondent was motivated to make such request to the 3rd Respondent based on insistence by the 7th and 8th Respondents. It is evident that both the 7th and 8th Respondents had overreacted to the anonymous petition received by the 7th Respondent against the Petitioner. I must take judicial notice of the fact that an allegation of misconduct by a male teacher in respect of a female student, could promptly give rise to a potential allegation against school administrators such as the Principal of the school and the relevant sectional Head. Unless they are seen to be taking prompt and serious action in respect of the allegation contained in the petition, they can be held accountable and faulted for inaction. On the other hand, it is quite likely that the originator of such petition was a person who entertained a *mala fide* intent to oust the Petitioner from Swarnapali Balika Maha Vidyalaya, possibly due to rivalry arising out of the popularity the Petitioner had earned for himself which had enabled the Petitioner to attract students to his large group tuition classes. There does appear to be a basis to conclude that either the 7th or the 8th Respondents had entertained a personal animosity or jealousy against the Petitioner. The identity of the author of the anonymous petition is not known. In those circumstances, apart from frowning at the manner in which the 7th and 8th Respondents had commenced the 'investigation / fact finding' in respect of the contents of the petition alleged to have been received by the 7th Respondent against the conduct of the Petitioner and carried out such process, I cannot claim that there exist an irresistible interference or their having entertained *mala fides* or a collateral motive in taking action against the Petitioner.

43. I shall now turn towards the submissions of the learned Senior Deputy Solicitor General who sought to justify the issuance of the impugned transfer order on three grounds, namely, (i) that the Petitioner was not a 'Graduate Teacher' of the Sri Lanka Teachers' Service, (ii) that the impugned transfer was aimed at correcting the error that had occurred, and (iii) exigencies of the service required the Petitioner to be transferred out of Swarnapali Balika Maha Vidyalaya and into Maithripala Senananyake Madya Maha Vidyalaya. I shall take each such ground separately and address them.

44. Was the Petitioner not a ‘Graduate Teacher’ of the Sri Lanka Teachers’ Service?

- The Petitioner primarily relies on “P4(b)”, “P4(c)”, “P4(e)”, “P5(a)”, “P5(b)” and “P8” in support of his contention that he belongs to the ‘Sri Lanka Teachers’ Service’. Therefore, it is necessary to refer to each of these documents.

- i. “P4(b)” - By letter dated 31st January 2015, the Petitioner has been informed by the Secretary to the Ministry of Education, Information Technology and Cultural Affairs of the North Central Province, that sequel to the publication of a Notice calling for applications for the selection of graduate teachers to teach in provincial schools of the North Central Province and the results at the corresponding interview, he has been selected by such Ministry as a ‘Graduate Teacher’ and that such selection has been approved by the Provincial Public Service Commission. The body of the letter does not contain any reference to the Petitioner being appointed by the Public Service Commission to the Sri Lanka Teachers’ Service. Furthermore, the letter has not been copied to the Ministry of Education (of the Government) or to the Public Service Commission. Thus, it is evident that by “P4(b)” the Petitioner has been notified of his appointment as a ‘Graduate Teacher’ of the Provincial Public Service and not to the Sri Lanka Teachers’ Service which feeds teachers to ‘National Schools’ as opposed to ‘Provincial Schools’. However, it must be noted that the caption of that letter is certainly misleading, as it refers to ‘Appointment as a Graduate Teacher - Grade 1, Class 3 of the Sri Lanka Teachers’ Service’.
- ii. “P4(c)” - By letter dated 16th June 2018, issued by the Additional Provincial Director of Education and counter-signed by the Provincial Director of Education, the Petitioner has been informed that with effect from 2nd December 2014, his appointment has been confirmed in the Teachers’ Service. Furthermore, this letter does not contain a reference to the Petitioner having been confirmed in the Sri Lanka Teachers’ Service. Given the officer who issued the letter and his institution (being the North Central Provincial Education Department), it is clear that confirmation in service is referable only to the Petitioner’s appointment to the Provincial Education Service.
- iii. “P4(e)” - By letter dated 17th September 2018, issued by the Additional Provincial Director of Education (Administration) and counter-signed by

the Provincial Director of Education of the Provincial Department of Education of the North Central Province, the Petitioner has been informed that, in terms of the restructured Service Minute of the Sri Lanka Teachers' Service and Circulars Nos. 35/2014 and 35/2014(i) issued by the Secretary of the Ministry of Education, with effect from 2nd December 2017, the Petitioner has been promoted to Class II of Grade 2 of the Sri Lanka Teachers' Service. It is evident that *ex facie*, one can easily assume that the promotion of the Petitioner is to Class II of Grade 2 of the Sri Lanka Teachers' Service. However, given the fact that the letter has been issued by an official of the Provincial Department of Education, and has been copied to the Secretary to the Provincial Public Service and to the Secretary of the Provincial Ministry of Education, one cannot necessarily conclude that the letter unequivocally refers to the Petitioner having been absorbed to the Sri Lanka Teachers' Service and promoted within that Service.

- iv. "P5(a)" - Dated 24th December 2022, issued by the Secretary of the Provincial Public Service Commission of the North Central Province under the caption "Inter-Province Teacher Transfer - Release", the letter has been addressed to the Secretary of the 'Chief Ministry' of the North Central Province and has been copied to the Secretary to the Ministry of Education (of the Government). It states that based on a recommendation made by the person to whom that letter is addressed, the Provincial Public Service Commission has approved the said recommendation to release the Petitioner to 'National Schools' Service'. Accordingly, the Secretary of the 'Chief Ministry' has been notified to release the Petitioner to teach at Swarnapali Balika Maha Vidyalaya. The submissions of neither Counsel were of assistance to this Court to understand the officer to whom this letter has been addressed. Be that as it may, the submission of learned Counsel for the Petitioner was that "P5(a)" tantamounted to the Petitioner having been released from the Provincial Teachers' Service to the Sri Lanka Teachers' Service to teach at Swarnapali Balika Maha Vidyalaya which is a 'national school' as opposed to a 'provincial school'. What this Court could gather from learned Senior DSG's submissions was that the issuance of "P5(a)" was mysterious, and it was certainly not evidence of the Petitioner having been absorbed to the Sri Lanka Teachers' Service. It is necessary to note that, (a) given the fact that the 'Secretary, Chief Ministry, North Central Province' cannot be taken as a synonym to 'Secretary, Provincial Ministry

of Education, North Central Province' and (b) the letter not having been copied to the Petitioner, and (c) in those circumstances the Petitioner not having stated to this Court as to how the Petitioner gained access to the said letter, some amount of doubt arises as to its authenticity. Be that as it may, even if credence is given to its contents, in the view of this Court, "P5(a)" reveals only that the Provincial Public Service Commission of the North Central Province had taken a decision to release the Petitioner to serve at Swarnapali Balika Maha Vidyalaya, which is a 'national school'. Thus, it is not evidence of the Petitioner having been absorbed to the Sri Lanka Teachers' Service. This is of particular importance because no position was taken by either the learned Counsel for the Petitioner nor learned Senior DSG that a teacher of a Provincial Teachers' Service cannot be appointed to teach at a 'national school' within the corresponding province.

- v. "P5(b)" - Dated 8th June 2023, "P5(b)" has been issued by the Deputy Director of Education (Administration) and co-signed by the Provincial Director of Education of the Provincial Department of Education of the North Central Province. It has been addressed to the 3rd Respondent (Secretary, Ministry of Education) and has been copied *inter alia* to the Petitioner. Captioned "Release from the Provincial Public Service to the National Schools Service", it states that the Petitioner was being released from the North Central Provincial Public Service to the National Schools Service. The 3rd Respondent has not claimed that he did not receive this letter. It is necessary to note that, this letter merely states that the Petitioner is being released to serve in the National Schools Service and does not state that he is being appointed to the Sri Lanka Teachers' Service.
- vi. "P8" - Dated 12th June 2023, issued by Director of Education (Teacher Transfers) B.A. Kalani Hemamali and co-signed by the then holder of the office of the 3rd Respondent (Secretary, Ministry of Education), "P8" has been addressed to the Petitioner through the Principal, Bulankulama Maha Vidyalaya (the school at which the Petitioner taught prior to his transfer to Swarnapali Balika Maha Vidyalaya). It refers to "P5(b)" and states that the Petitioner is being transferred to Swarnapali Balika Maha Vidyalaya for the purpose of teaching 'Accounts'. The 3rd Respondent has not asserted that "P8" had not been issued under his authority. This letter clearly reveals that the Ministry of Education of the Government had clearly participated in

transferring the Petitioner from a Provincial School to a National School. However, this letter too does not reveal that the Petitioner had been absorbed to the Sri Lanka Teachers' Service.

45. In view of the foregoing and the other evidence presented to this Court by all parties, I have not found any evidence that reveals that the Petitioner has been released from the Provincial Education Service and appointed or absorbed into the Sri Lanka Teachers' Service. To that extent, I find myself in agreement with the submissions made in that regard by learned Senior Deputy Solicitor General. However, though the Petitioner appears to have initiated the process, it is evident from the letters referred to in the preceding paragraph, that the Petitioner had been formally released by the provincial authorities from the Provincial Public Service / Provincial Education Service and appointed by the Ministry of Education to serve in the 'National Schools Service' and consequently appointed by the Ministry of Education to serve at Swarnapali Balika Maha Vidyalaya (which is a national school).
46. **If the Petitioner did not belong to the Sri Lanka Teachers' Service, was the impugned transfer order aimed at rectifying the situation and placing the Petitioner back in the North Central Provincial Teachers' Service?** - In view of the foregoing, it would be seen that, the Ministry of Education cannot claim that there had been an irregularity in the Petitioner gaining an appointment at Swarnapali Balika Maha Vidyalaya. That is due to the simple reason that it had been the Ministry of Education that had made such appointment ("P8"). If in fact it was not possible or irregular to appoint the Petitioner (who had not been appointed / absorbed into the Sri Lanka Teachers' Service) to teach at a national school (on the premise that only teachers of the Sri Lanka Teachers' Service were entitled to teach at national schools, as suggested by learned Senior DSG), only the Ministry of Education headed by the holder of the office of the 3rd Respondent can be faulted in that regard. No accountability can be imposed on the Petitioner for the transfer into Swarnapali Balika Maha Vidyalaya, which is a national school. Furthermore, even if in fact the appointment of the Petitioner at the Swarnapali Balika Maha Vidyalaya was irregular on the footing that he was not a teacher of the Sri Lanka Teachers' Service, how could such irregularity be cured by transferring him to Maithripala Senanayake Madya Maha Vidyalaya, which is another national school? I did not find an answer to this question in the pleadings

of the 3rd and 22nd Respondents or in the submissions of the learned Senior DSG. Thus, I reject that proposition.

47. **Were there exigencies of service that warranted the Petitioner to be transferred out from Swarnapali Balika Maha Vidyalaya and into Maithripala Senanayake Madya Maha Vidyalaya?** - The 3rd and 22nd Respondents have taken up conflicting positions with regards to the reasons for the Petitioner's transfer from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya. On the one hand, supported by the contents of "P9", they claim that the Petitioner was transferred due to exigencies of service. On the other hand, they claim that the Petitioner was transferred to rectify an irregularity (referred to in the preceding paragraph). It would be noted that these two reasons cannot be concurrently accepted. It should be one reason or the other. The advancement of such inconsistent positions as reasons for the impugned transfer, in my view, affects the credibility that could be attached to the Affidavit testimony of both the 3rd and 22nd Respondents.

48. Be that as it may, if in fact the reason for the transfer of the Petitioner from one school to the other was due to exigencies of the service, it was incumbent on the part of the 3rd Respondent to present to this Court material based upon which the 1st and 2nd Respondents had arrived at the decision that exigencies of service necessitated the transfer of the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya. The justification for such findings ought not to have been complicated. A formal request which had originated from Maithripala Senanayake Madya Maha Vidyalaya that the school either did not have or there was a death of a teacher(s) to teach 'Accounts', and a corresponding notification originating from Swarnapali Balika Maha Vidyalaya that the said school had an excess of 'Accounts' teacher(s), would have been a reasonable justification. Such a request and a notification (if existed) would have certainly justified the decision to transfer the Petitioner from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya on the ground of exigencies of service. The existence of a notification would have been established had the 3rd Respondent produced as evidence letter dated 11th October 2023 bearing reference "*NCP/ED/Paa03/Disciplinary/Anu/Vi.Go.*". As pointed out previously, that letter was not produced before this Court. In such circumstances, I conclude that the 3rd Respondent has not presented to this Court material to

satisfy this Court that the Petitioner was in fact transferred from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya on the ground of exigencies of service. Therefore, I reject that basis for the transfer as well.

Declarations and Orders

49. Based on the foregoing analysis and conclusions, I hold that the Petitioner's transfer from Swarnapali Balika Maha Vidyalaya to Maithripala Senanayake Madya Maha Vidyalaya (as contained in "P9") was unlawful, and therefore it amounted to an infringement of the Petitioner's fundamental rights guaranteed by Article 12(1) of the Constitution.
50. Accordingly, I declare that the 1st, 2nd and 3rd Respondents have infringed the Petitioner's fundamental rights guaranteed by Article 12(1) of the Constitution.
51. The State shall pay a sum of Rs. 500,000/= to the Petitioner as compensation in respect of the infringement of his fundamental rights.
52. The Petitioner shall be entitled to recover from the State the full cost incurred by him to file this Fundamental Rights Application and prosecute it.
53. Till such time the Petitioner is transferred out from Swarnapali Balika Maha Vidyalaya in the normal course and in terms of the applicable Rules of the Public Service Commission, the Petitioner shall be entitled to serve at Swarnapali Balika Maha Vidyalaya.
54. During such period of service at Swarnapali Balika Maha Vidyalaya, the Principal of such school is directed to assign a teaching timetable to the Petitioner compatible with the requirements of the school, the Petitioner's qualifications, skills and teaching experience.
55. Till the Petitioner is absorbed to the Sri Lanka Teachers' Service (following his satisfaction of the required criteria and the requisite procedure being followed), the Petitioner shall be treated as a Teacher of the Provincial Public Service / Provincial Teachers' Service of the North Central Province.

Outcome

56. In view of the foregoing, this Fundamental Rights Application is allowed.

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

Judge of the Supreme Court