

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

In the matter of an application for a
mandate in the nature of a Writ of
Certiorari, under and in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

C A 139 / 2014 Writ

A. W. Manjula Manori Gunawardena,
110/14, Temple Road,
Maharagama.

Petitioner

Vs.

1. Ranjith Chandrasekera,
Director-National Schools,
Ministry of Education,
“Isurupaya”
Bttaramulla.
2. W.D.P.K. Samarasinghe,
Principal,
Devi Balika Vidyalaya,
Colombo 08.
3. Anura Dissanayake,
The Secretary to the Ministry of
Education,
“Isurupaya”
Battaramulla.

Respondents

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : Faiz Musthapa PC with Shantha Jayawardena for
the Petitioner
Arjuna Obeysekera DSG for the Respondents
SUPPORTED ON : 29.05.2014
DECIDED ON : 11.06.2014

UPALY ABEYRATHNE, J.

By a letter dated 15.07. 2011, the Petitioner was appointed as a Class 3 Grade 1 Graduate Teacher of the Sri Lanka Teachers Service and placed at the Devi Balika Vidyalaya, Colombo 8, with effect from 15.07.2011 by the Secretary to the Ministry of Education (the 3rd Respondent). Said letter of appointment has been produced marked P 1. The Petitioner has averred that over a dispute arisen upon an assignment to travel to Nuwara Eliya as the teacher in charge of several female students participating at a chess competition for school children scheduled to be held in Nuwara Eliya for 03 consecutive dates, the Petitioner was handed over a letter dated 01.04.2014 (P 4) issued by the 1st Respondent Director – National Schools transferring the Petitioner from Devi Balika Vidyalaya to Lumbini Vidyalaya, Colombo 05, with effect from 07.04.2014 on the basis of exigencies of service.

The Petitioner's position was that the said transfer letter issued by the 1st Respondent was *ultra vires* and illegal because the 1st Respondent has no authority to transfer teachers under the procedural rules of the Public Service Commission (PSC) on Appointment, Promotion and Transfer of Public Servant.

It is common ground that by the Gazette Extraordinary notification bearing No 1733/52 dated 25th November 2011 Powers of the PSC to Transfer, Disciplinary Control and Extension of Services beyond the age of 57 years of Teachers of Sri Lanka Teachers' Service has been delegated to the Secretary to the Ministry of the Minister in Charge of the Education / an Additional Secretary nominated by the Secretary and approved by the PSC. It is also common ground that said rules does not empower any kind of delegation of powers of PSC to an officer other than the officers mentioned in column II of the said Gazette Notification.

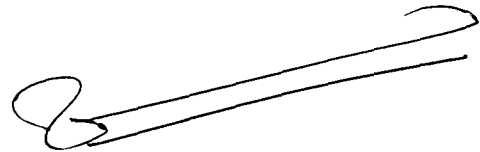
It is important to note that there is no any documentation before court which confers any authority to the 1st Respondent to issue the impugned letter P 4. Also it must be noted that the said letter P 4 does not reflect that the 3rd Respondent to whom the power of transfer has been delegated by the PSC has approved and adopted the same.

In the said premise it is crystal clear that the Petitioner could have been subjected to the said transfer in the service only by the Secretary to the Ministry of the Minister in Charge of the Education or by an Additional Secretary nominated by the Secretary and approved by the PSC. Hence no doubt that the 1st Respondent's said letter of transfer of the petitioner (P 4) is *ultra vires* and illegal until the contrary is proved.

The learned counsel for the Respondents submitted that Article 61A of the Constitution is a complete bar and a jurisdictional ouster and only the Supreme Court have jurisdiction to inquire in to the decisions made by the PSC. In the present case the impugned letter has been sent to the Petitioner by the 1st Respondent Director, National Schools, who was not an Officer falling within the

category of Officers named in the said Extraordinary Gazette notification to whom the power has been delegated by the PSC. In the case of *Abeywickrema Vs. Pathirana* [1984] 1 Sri L.R. 215 (SC) it was held that “the provisions of Article 56 (5) may be invoked or applied only when the order or decision in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a Public Officer is made, inter alia, by a "Public Officer" to whom the Public Service Commission or any Committee thereof has delegated, in terms of Article 58 (1) of the Constitution, the powers of appointment, transfer, dismissal & disciplinary control of any category of Public Officers. The burden of establishing that there has been no such express delegation to the Regional Director of Education, Galle, is on the petitioner. If the petitioner establishes that there has been no express delegation, then the 1st respondent may lead evidence that there has been an implied delegation of the powers referred to in Article 58 (1).”

In the said circumstances I am of the view that the petitioner is entitled to the reliefs as prayed for in prayer (a) and (d) of the Petition. Hence the Registrar of this court is directed to issue notice on the Respondents and to issue an interim order suspending the decision of the 1st Respondent reflected in P 4 to transfer the Petitioner from Devi Balika Vidyalaya to Lumbini Vidyalaya until the final hearing and determination of this application.



Judge of the Court of Appeal