

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an appeal from the Judgment/
Order of the Provincial High Court exercising writ
jurisdiction in terms of Section 7 of High Court of
the Provinces (Special Provisions) Act No. 19 of
1990 read with Article 154 (P) of the Constitution
of the Democratic Socialist Republic of Sri Lanka,
as amended by the 13th Amendment.

Court of Appeal Case No:

CA/PHC/19/2016

HC Kandy Case No:

Writ 09/2015

Udaha Weda Gedara Jayanthi Kumari,

No. 69/1/C,

School Road,

Bowala, Gampola.

Petitioner-Appellant

-Vs-

1. T.B. Wijeratne,

Secretary of Education of the Central Province,

Pallekele,

Kundasale.

2. E.G.T.K. Ekanayake,

Provincial Director of Education of Central

Province,

Provincial Department of Education,
Kandy.

3. Ananda Premasiri,
Zonal Director of Education,
Zonal Education Office,
Gampola.
4. P.N.P. Subhasinghe,
Additional Zonal Director of Education,
Zonal Education Office,
Denuwara,
Pilimatalawa.

Respondent-Respondents

Before : A.L. Shiran Gooneratne J.

&

Dr. Ruwan Fernando J.

Counsel : C. Paranagama for the Petitioner-Appellant.

C. Ekanayake, SC for the Respondent.

Written Submissions: By the Petitioner-Appellant on 20/12/2019

By the Respondent-Respondents on 27/01/2020

Argued on : 30/06/2020

Judgment on : 27/07/2020

A.L. Shiran Gooneratne J.

The Petitioner-Appellant (hereinafter referred to as the Appellant) invoked the jurisdiction of this Court to set aside the order dated 03/02/2016, delivered by the learned Provincial High Court Judge of Kandy dismissing an application to issue a writ in the nature of *Certiorari* to quash the decision of transfer of the Appellant, to the post of Deputy Principal by the 1st Respondent-Respondent, pending disciplinary inquiry as reflected in the impugned document marked "P11".

According to the Petition filed in the Provincial High Court, the impugned decision was challenged on the following grounds.

1. failure to issue a formal charge sheet
2. denial of right to challenge the said charge sheet before a competent authority.
3. denial of right to challenge the findings by a competent authority in appeal.
4. demotion in service pending inquiry.

As reflected in paragraph 9:6 of the written submissions filed of record, it is the position of the Appellant that there was no charge sheet issued against the Appellant at the time the original application was made to the Provincial High Court. It is also submitted that according to the documents tendered by the Respondent, it is evident that the Appellants statement was recorded after the charge sheet was issued.

State Counsel for the Respondents contends that serious financial irregularities had taken place during the Appellants tenure as principal of Gangasiripura Kanishta Vidyalaya and a preliminary inquiry, concluded, that the Appellant was guilty as charged and ordered a sum of Rupees 316,719.87 to be recovered. Thereafter, pending a formal inquiry, the Appellant was transferred to Nillamba Maha Vidyalaya by the impugned letter marked "P11". The learned Counsel further submits that the said investigation was carried out in terms of Financial Regulation 104 and that the exigencies authorized the transfer of the officer in terms of Section 24(4) of the Establishment Code. It is also submitted that the said transfer could not be considered as a demotion, since the Appellant was transferred from a Grade II school to a Grade IC school, which is located higher in the hierarchy of schools.

The Appellant invoked jurisdiction of the Provincial High Court when the said transfer was effected as reflected in the impugned letter, pending formal inquiry.

When this matter was taken up for argument the learned Counsel for the Appellant contended that, at present, the formal inquiry proceedings instituted against the Appellant is concluded and the matter is now pending in appeal before the Provincial Public Services Commission.

In the circumstances, the only question before this Court for determination is whether the transfer of the Appellant pending formal inquiry is justified.

The grievance of the Appellant is that the transfer from a Grade II school to a Grade IC school is not justified and amounts to a demotion in service. It is

observed that the Petitioner has complied with the transfer order and assumed duties in the school transferred to since 2016. Clause 24(4) of the Establishment Code mandates such transfer pending formal inquiry.

There is a real possibility of impeaching credibility of due process when an officer is permitted to remain in an institution where his conduct is investigated. Clause 24(4) prevents such situation by authorizing the transfer of such officer pending inquiry. The State Counsel in the course of his submission has drawn attention of Court to pages 148 and 149 of the brief to substantiate his stand that the transfer pending formal inquiry cannot be considered as a demotion in service as contemplated by the Appellant as for reasons aforesaid. The learned Counsel for the Appellant has not placed any material before Court to contradict this position.

In the circumstances, we do not see any illegality or breach of duty on the part of the Respondents to justify the issuance of a writ of *Certiorari* to quash the impugned decision.

Accordingly, the judgment of the Provincial High Court Judge is affirmed.

Application dismissed. We make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL