

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

*In the matter of an application for
mandates in the nature of a Writs of
Certiorari under and in terms of
Article 140 of the Constitution.*

CA Writ No. 666/25

A T D De Silva

104

Madinagoda

Rajagiriya

PETITIONER

-Vs-

1. P R Devabandu

Zonal Director of Education

Zonal Education Office

No 50

Vithanage Mawatha

Colombo 02

2. Anusha Gokula Fernando
Secretary
Provincial Ministry of Education and
Sports of Western Province
2nd Floor
New Provincial Office Complex
204
Denzil Kobbakaduwa Mawatha
Battaramulla

3. Sanath J. Ediriweera
Chairman
Public Service Commission

4. G.S.A. de Silva
Member
Public Service Commission

5. A.D.N. de Zoysa
Member
Public Service Commission

6. S.M. Mohamed
Member
Public Service Commission

7. Ranjani Nadarajapillai
Member
Public Service Commission

8. M.B.R. Pushpakumara
Member
Public Service Commission

9. N. Selvakkumaran
Member
Public Service Commission

10. Sanath Panawennage
Member
Public Service Commission

11. J A Ranjith
Chairman
Educational Service Committee
Public Service Commission

12. A K W W M N K Weerasekara

Member

Educational Service Committee

Public Service Commission

13. W M N J Pushpakumara

Member

Educational Service Committee

Public Service Commission

Above 3rd to 13th Respondents at;

Public Service Commission,

No. 1200/9, Rajamalwatta Road,

Battaramulla.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Manohara De Silva, P.C. for the Petitioner

Rajin Goonaratne, S.C. for the Respondents

Written Submissions on : 19.09.2025 for the Petitioner
22.09.2025 for the Respondents

Supported on : 25.08.2025
Decided on : 04.11.2025

K. Priyantha Fernando, J. (CA)

The Petitioner, a Grade 1 Principal of Sri Sangamiththa Balika Vidyalaya, Colombo 10, by the Petition dated 17.06.2025, challenged her sudden transfer to the Western Province Education Department.

THE POSITION OF THE PETITIONER:

On 09.06.2025, she was informed verbally, and later by letters (P5 and P6), that she had been transferred pending a preliminary investigation. She had never been served with a charge sheet, informed of allegations, or called for inquiry, rendering the process *ex parte* and contrary to natural justice.

She submitted that the 1st Respondent (Zonal Director) had no disciplinary authority over her and acted ultra vires. The 2nd Respondent, relying on those unlawful recommendations, issued P5, which merely “assigned” her to the Provincial Education Department without a post—a step unknown to law and contrary to the Establishments Code. As a Grade 1 Principal she could only have been transferred to an equivalent post.

She emphasized that no preliminary investigation had begun, no allegations had been revealed, and there was no guarantee one would take place. She sought the investigation report under the Right to Information Act, No. 12 of 2006 (P7, P8). Appeals were also made to the Governor, the Chief Secretary, and the Provincial Public Service Commission (P9–P12), but no response had been received.

The Petitioner therefore prayed for writs of certiorari quashing the impugned letters P5 and P6 and quashing the recommendations of the 1st Respondent, together with interim relief suspending the transfer and handover until final determination. She invoked Article 140 of the Constitution, stating that the decisions were illegal, arbitrary, mala fide, and without jurisdiction.

The Petitioner reiterated that P5 was unlawful. She stressed that she was a Class 1 Principal of the Sri Lanka Principals’ Service, which was an all-island service

under the Public Service Commission, and not a Provincial service officer. Her appointment letters (X4, X5, X6) confirmed this, and the Service Minute of the Sri Lanka Principals' Service (X1) required her to serve only as a school Principal. The Secretary to the Provincial Ministry of Education, she contended, had no power to transfer her; **Gazette No. 1950/47 of 21.01.2016** cited by the Respondents **did not confer transfer powers over the Principals' Service.**

On the merits, she highlighted that the inquiry report (X2) concerned Grade 1 school admissions and explicitly found that admissions were in line with the relevant circulars. Thus, she should have been exonerated. Instead, the committee illegally recommended further inquiry and removal. She was never informed of allegations, never given a charge sheet, and her statement was not recorded. Thus, it's a clear violation of natural justice.

The later references in the report to financial and administrative irregularities (මෙම පරික්ෂණය අතරතුර අනාවරණය වූ කරුණ ...) were, she argued, irrelevant and unsupported by any formal complaint; they had been fabricated to justify her removal. Report X2, she said, contained no reasoning as to why her continued presence would obstruct an investigation.

She relied on Section 263 of the Public Service Commission Procedural Rules, which allowed transfers only under specific circumstances. None applied here,

as no disciplinary order had been made and no obstruction had been shown. Accordingly, she asserted that a strong *prima facie* case existed and prayed for notice on the Respondents and a continuation of the status quo order until final determination.

THE POSITION OF THE RESPONDENTS:

The Respondents argued that the Petitioner's challenge to P5 and P6 was misconceived. As a Principal of a Provincial school, she fell under Provincial authority. They cited Section 03 of the Provincial Council List (9th Schedule to the Thirteenth Amendment), Appendix III, and Section 32(1)– (2) of the Provincial Councils Act, No. 42 of 1987 (as amended by Act No. 28 of 1990). They relied on Gazette No. 2046/8 of 26.03.2018 and Gazette No. 2082/7 of 31.07.2018 (X1), which, they said, delegated powers over the Principals' Service to the Secretary to the Provincial Ministry of Education, thereby giving the 2nd Respondent authority to issue P5.

They further relied on the Petitioner's own promotion letter (X5), which, in their view, acknowledged that she was subject to Provincial administration and disciplinary control.

They emphasized that P5 had been based on an investigation report (X2) which found irregularities in student admissions and other malpractices at the school,

and which recommended a preliminary inquiry and removal of the Petitioner from post to prevent obstruction.

They also cited Rule 246(III) of the Western Provincial Council Procedural Rules (Gazette No. 2364/32 dated 29.12.2023, X3), which permitted removal where retention might obstruct a preliminary investigation. Thus, the reassignment was said to have been only a preliminary step, not a disciplinary punishment. Finally, the Respondents contended that the Petition was premature, as no formal disciplinary action had yet been taken. Granting interim relief would obstruct the lawful inquiry process and cause grave administrative inconvenience. Therefore, they argued, the Petitioner had no *prima facie* case, and the application ought to be dismissed *in limine*.

CONCLUSION:

This Court must decide whether letter P5 is illegal and liable to be quashed. **P5** contains the decision by the 2nd respondent-Secretary, Provincial Ministry of Education and Sports of Western Province, to temporarily assign the Petitioner to the Western Province Education Department until a preliminary investigation is concluded.

It is common ground that the Petitioner is in the Principal Service and is serving as principal in a school which is a provincial school falling under the purview of the Western Provincial Council.

In terms of Item 3 of the Provincial Council List in the 9th Schedule of the 13th Amendment to the Constitution provides that Education and Educational Services to the extent set out in Appendix III in which said powers are vested with the Provincial Council.

Appendix III of the 9th Schedule of the 13th Amendment provides as follows:

“The transfer and disciplinary control of all educational personnel, i.e. Teachers, Principals and Education Officers belonging to a National Service but serving the Provincial Authority on secondment will have the right of appeal to the Public Service Commission. Officers belonging to the Provincial Public Service will have a right of appeal to the Public Service Commission against dismissal.”

Thus, it is apparent that the Petitioner's disciplinary control during her service in the Provincial Council is vested with the Provincial Authorities.

Furthermore, **Section 32(1) and 32(2)** of the Provincial Council's Act No. 42 of 1987 as amended provides as follows:

Section 32(1) Subject to the provisions of any other law, the appointment, transfer, dismissal, and disciplinary control of the provincial public service of each Province is hereby vested in the Governor of that Province.

*Section 32(2) **The Governor** of a Province may, from time to time, **delegate his powers of** appointment, **transfer**, dismissal, and disciplinary control of office of the provincial public service of each Province is hereby vested in the Governor of that Province.* (the emphasis was added)

The above provision is amended in the Provincial Councils (Amendment) Act No. 28 of 1990, Section 4 which reads as follows:

*“(2A) The Provincial Public Service Commission of a province may, subject to such conditions as may be prescribed by the Government of that Province, **delegate to the Chief Secretary** or any officer of the provincial public service of that Province, its **powers of** appointment, **transfer**, dismissal, and disciplinary control of officers of the provincial public service.* (the emphasis was added)

(2B) Any officer of the provincial public service of a Province aggrieved by any order made by the Chief Secretary or any officer of the provincial public service of that Province, to whom the Provincial Public service of that Province has delegated its powers under the preceding subsection shall have a right of appeal to such Provincial Public Service Commission”.

The extra ordinary gazette No. 2082/7 published on 31.07.2018 marked as X1 which contains “*Order pertaining of powers of the Western Provincial Public Service under Section 32(2a) of the Provincial Councils Act, No. 42 of 1987 as amended by the Provincial Councils (Amendment) Act No. 28 of 1990*”.

At page 5A of the said gazette, under SCHEDULE No. 04, power of transfer regarding officers of Sri Lanka Principals’ Service are delegated to the Secretary to the Provincial Ministry of Education.

The impugned letter P5 has been signed by the Secretary to the Provincial Ministry of Education. Thus, the author of P5 has not acted illegally or in ultra vires but acted within the powers vested on her.

WHETHER THE TRANSFER IS AGAINST THE FINDINGS OF THE RESPONDENTS:

The learned State Counsel has tendered the alleged report marked as X2, where the committee has found that School admissions pertaining to year 2025 has been conducted in accordance with the applicable circulars. It was argued that if the committee was appointed to investigate a complaint regarding Grade 1 School Admissions, and the committee concludes that school admissions have been conducted in accordance with the applicable circular, then the petitioner must be exonerated. However, it has been revealed during the course of the investigations that the continued retention of the petitioner can obstruct preliminary investigation of regarding revealed facts.

WHETHER THERE IS VIOLATION OF NATURAL JUSTICE?

It has been revealed that until the committee report marked X2 tendered to the Court, the Petitioner has never been informed of any allegation against her. In fact, X2 itself demonstrate that although the committee has recorded statements from various persons, no statement has been recorded from the petitioner.

The letter of temporary assigning marked P5 which is the impugned document also does not reveal any reason or allegation against the petitioner and simply refers to a preliminary investigation being conducted. However, the complaint against the petitioner is revealed by X2, viz. regarding irregularities of school admissions. It is argued that whether a preliminary investigation can be held with respect to irregularities of school admissions as the committee has already

made a contrary finding. However, further matters have been revealed regarding previous years admissions during the course of the preliminary investigation and the committee has thus recommended temporary removal of petitioner from her post since further investigations need to be carried out without possible obstructions.

It was contended that a formal disciplinary action has been recommended only for the purpose of transferring the petitioner. No complaints ex facie has been made by any person regarding the allegations in X2. The complaint that the committee was tasked was inquiring into alleged illegal school admissions made by the petitioner.

Section 263 of the PSC Procedural Rules contains rules regarding transferring a public officer on disciplinary grounds.

Section 263 is reproduced as follows:

*"The Disciplinary Authority or the **authority with delegated power may transfer a public officer on disciplinary grounds in the following instances even without prior notice.***

- i. *Where a disciplinary order has been made with a transfer as punishment consequent upon the formal disciplinary inquiry held against the officer concerned.*
- ii. *Although the findings of a preliminary investigation do not warrant the interdiction of the officer but require that he should not be allowed to serve in his present duty station.*

iii. ***Where it is found on matters revealed either before the beginning, or in the course of a preliminary investigation or on existing circumstances that the continued retention of a public officer in service in his post or at his present duty station may obstruct the conduct of a preliminary investigation***". (the emphasis was added)

The **above third instance was relied upon by the report X2** under recommendations. It states that considering the revelations, because of the fact that the **petitioner has served as the principal of the school since 24.11.2011**, background is created for financial irregularities, and therefore, it is recommended that, formal preliminary investigation be conducted against the officer; during such investigation, it is recommended to temporarily remove from the post of principal as there can be tampering with witnesses and there can be refusal of parents and teachers giving information and evidence with respect to the investigation.

Thus, in the above circumstances, it is clear to this Court that the 2nd respondent has acted within her powers. It has been found during the course of the preliminary investigation that the continued retention of the petitioner in service in her post may obstruct the preliminary investigation. Under these circumstances, it seems that the Respondents have acted reasonably since the Petitioner is only temporarily assigned to the Department of Education of the Western Province as retaining her at present duty station which she has

Functioned for 14 long years can most probably obstruct the conduct of further preliminary investigation on new matters elicited during the investigations.

For all the above reasons, the Petitioner has not established a potential arguable case and accordingly this Court refuse to issue formal notice. The application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal