

RATNAYAKE
v.
ATTORNEY-GENERAL

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
PERERA, J. AND
GUNAWARDENA, J.
S.C. (FR) APPLICATION NO. 236/96.
APRIL 02 AND 25, 1997.

Fundamental Rights – Constitution, Article 12(1) – Transfer – Burden Proof.

The burden is squarely on the petitioner to establish the alleged violation of Article 12(1) of the Constitution.

It is not enough for the petitioner to show that she has been denied the protection of the law. She must also show that she has been denied equal protection – that she was treated less favourably than others similarly situated.

At best the petitioner's case is that the transfer was wrongful but that is not enough to ground a complaint of infringement of Article 12(1). The petitioner must establish unequal or discriminatory treatment in respect of the transfer complained of.

Case referred to:

1. *Jayasinghe v. The Attorney-General and Others* [1994] 2 Sri L.R. 74, 88.

APPLICATION for relief for alleged infringement of fundamental rights under Article 12(1).

W. Dayaratne with Miss Inoka Ranasinghe and Ranjika Jayawardena for petitioner.
Chandra Gamage for 2nd, 5th and 8th respondents.

K. Siripavan D.S.G., for 1st and 7th respondents.

Cur. adv. vult.

May 08, 1997.

G. P. S. DE SILVA, C.J.

At the time material to this application the petitioner was a Grade I principal who had assumed duties on 1.2.94 as principal of the Kalubowila Maha Vidyalaya. She was granted study leave for a period of one year from 31.1.95 to pursue a course in education

management and obtain a post graduate diploma. In her petition she complained of two matters, namely, (1) the repeated requests made by the 3rd respondent (Secretary, Provincial Ministry of Education, Western Province) to vacate her official quarters at the Kalubowila Maha Vidyalaya and (b) her transfer out of the Kalubowila Maha Vidyalaya upon the completion of her course of study. As it stands today, the transfer is from Kalubowila to Dharmarama Vidyalaya, Ratmalana. After this application was filed, she agreed to vacate the official quarters at Kalubowila on or before 30th April, 1997 and that question is no longer a live issue. The short point that now arises for consideration is whether her transfer out of the Kalubowila Maha Vidyalaya is violative of Article 12(1) of the Constitution.

Admittedly, she is in a transferable service. A transfer *per se* may not constitute a violation of Article 12(1). On a scrutiny of the averments in her petition it seems to me that her complaint of the violation of Article 12(1) of the Constitution is founded essentially upon the following assertion. "The petitioner states that she decided to follow the aforesaid post graduate diploma as it would not have any impact on her employment or the use of the principal's quarters and also as the study leave was approved to her without any condition. It is also submitted that **all other principals who participated in the said course on study leave were restored back to the same schools with the same designation, without any discrimination.** The petitioner states the principal of Vijaya Vidyalaya, Karagampitiya, Dehiwala, one Mrs. Chitra Tillekeratne, one of the principals who participated at the said course ... got the same school after she completed the said course without any discrimination." (paragraph 28) (emphasis added).

On the other hand, the 3rd respondent in his affidavit denies that "all principals who participated in the diploma course were brought back to their former schools" and further avers that the question of going back to the former school would depend, *inter alia*, on how well the principal had managed the school prior to going on leave. The petitioner has not stated the number of principals who participated in the course of study nor any other relevant details in support of her claim. She was content to refer to the name of only one principal who

assumed duties at the former school. In this connection, it is well to bear in mind that the burden is squarely on the petitioner to establish the alleged violation of Article 12 (1) of the Constitution. As pointed out by Fernando J., in *Jayasinghe v. The Attorney-General and Others*⁽¹⁾. It is not enough for the petitioner to show that he has been denied the protection of the law. He must also show that he has been denied **equal** protection, that he was treated less favourably than others similarly situated." The petitioner has failed to place before us sufficient material to establish this all-important fact.

Moreover, the position of the respondents was that the decision to transfer the petitioner out of the Kalubowila Maha Vidyalaya was taken even before she was granted study leave. This is to some extent supported by 3R1 and 3R25. The report 3R1 dated 4.1.95 made by S. W. Mohottala, the Deputy Director of Education, sets out in detail the deficiencies in the administration of the school during the period the petitioner functioned as principal. However, according to the petitioner, 3R1 is a fabrication for the purposes of this case. Even if that be so, there is the detailed memorandum dated 19.12.94(3R25) forwarded by members of the staff complaining of the conduct of the petitioner. It is not suggested that 3R25 is also a fabrication for the purposes of this case. It seems to me that the case for the petitioner, at its best, is that the transfer was wrongful; but that is not enough to ground a complaint of infringement of Article 12(1). The petitioner must establish unequal or discriminatory treatment in respect of the transfer complained of. This she has failed to do.

I accordingly hold that the alleged violation of Article 12(1) has not been established. The application fails and is dismissed, but in all the circumstances, without costs.

PERERA, J. – I agree.

GUNAWARDENA, J. – I agree.

Petition dismissed.