

**CHANDRASENA
V.
KULATUNGA AND OTHERS**

**SUPREME COURT.
G.P.S. DE SILVA, C.J.,
RAMANATHAN, J. AND
WADUGODAPITIYA, J.
S.C. APPLICATION 206/95.
20TH SEPTEMBER, 1996.**

Fundamental rights-Article 12(1) of the Constitution-selective hostile discrimination-transfer of a school teacher.

The Petitioner, a trained teacher, complained that he was transferred from Puttalam Regional Education Office to the Nikaweratiya Regional Education Office, in the middle of the year, with only 6 days notice, "without valid reasons or cause and in an arbitrary, malicious and capricious manner, subjecting him to selective hostile discrimination". The Petitioner averred that no other teacher in North - Western Provincial Council had been transferred in this manner. The 3rd Respondent (North - Western Provincial Director of Education) claimed that the transfer was on disciplinary grounds, with the Petitioner's consent, but the documentary evidence contradicted this claim.

Held :

No acceptable or valid reason existed for the transfer of the Petitioner, this was unreasonable and arbitrary; and hence violative of Article 12(1) of the Constitution and is void.

APPLICATION for relief for violation of Fundamental rights.

Dulinda Weerasuriya for Petitioner.

Surath Piyasena D.S.G. for Respondents.

Cur.adv.vult.

3rd October, 1996.
G.P.S. DE SILVA, C.J.

The Petitioner, a trained teacher in "physical education", complains that his transfer from the Puttalam Regional Education Office to the

Nikaweratiya Regional Education Office is violative of Articles 12(1), 12(2) and 14(1)(d) of the Constitution. The transfer was effected by letter dated 24.5.95 (P1) addressed to the Petitioner by the 3rd Respondent, the Director of Education, Ministry of Education of the North Western Provincial Council. The transfer was to take effect from 01.6.95. In his petition he avers, *inter alia*, that the transfer was effected at the instance of the 6th Respondent, a Member of Parliament of the Puttalam District; that he was an active member of the Jathika Adyapana Sangamaya which is a trade union affiliated to the United National Party; that he holds office in the trade union; that he was a member of the Puttalam Regional Teachers' Transfer Board; that the transfer was made in the middle of the year and with only 6 days notice; that no other officer in the educational services of the Provincial Council of the North Western Province has been transferred in this manner; that the transfer had been made "without valid reasons or cause and in an arbitrary, malicious and capricious manner subjecting him to selective hostile discrimination."

The 3rd Respondent (Director of Education, Ministry of Education of the North Western Provincial Council, Kurunegala) in his affidavit has taken up the position (a) that there were several complaints of misconduct against the Petitioner and that the Petitioner himself suggested "that he be transferred to the Nikaweratiya regional education office"; (b) that the Petitioner was transferred "on disciplinary grounds and with his consent" (para.17 of the affidavit). He has annexed to his affidavit complaints against the Petitioner alleging misconduct. These complaints were made in March and April, 1995.

The Petitioner in his counter-affidavit dated 20.11.95 has specifically denied the position of the 3rd Respondent that the transfer was on disciplinary grounds and was made with his consent. Together with his counter-affidavit the Petitioner has filed two important documents which, in my view, completely contradict the claim of the 3rd Respondent that the transfer was on disciplinary grounds and was made with the consent of the Petitioner. The first document is P15 which is a letter dated 18.8.95 written by the Secretary to the Ministry of Education, Cultural and Rural Development of the North Western Province addressed to the Regional Director of Education, Puttalam, wherein it is specifically stated that the Petitioner is entitled to the travelling

allowances and the "settling-in allowances" as the transfer which is the subject matter of these proceedings was not on disciplinary grounds and was not at the request of the Petitioner. The other document is P13 dated 24.8.95 addressed to the Petitioner by the 3rd Respondent wherein it is stated that the Petitioner was transferred owing to the exigencies of service. It is to be noted that the ground of transfer alleged in P13 also contradicts the position taken up by the 3rd Respondent.

Apart from the fact that the documentary evidence is clearly inconsistent and contradictory of the claim of the 3rd Respondent that the transfer was on disciplinary grounds, there is also the important fact that the transfer was effected in the middle of the year and with only 6 days notice to the Petitioner.

On a consideration of the matters set out above I hold (a) that no acceptable or valid reason existed for the transfer of the Petitioner; (b) that the impugned transfer was unreasonable and arbitrary. I accordingly grant a declaration that the order of transfer (P1) is violative of Article 12(1) of the Constitution and is void. The Director of Education, Ministry of Education of the North Western Provincial Council, Kurunegala, must pay the Petitioner a sum of Rs.750/- (Seven hundred and fifty) as costs.

RAMANATHAN, J. – I agree

WADUGODAPITIYA, J. – I agree

Reliefs Granted.