

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

In the matter of an application under and
in terms of Article 12(1) and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

Lalitha Weerasinghe

23/12,

SC/ FR/ 152/2019

Wallauw Watta,
Hikkaduwa

PETITIONER

-Vs-

1. Ranmal Kodithuwakklu

Deputy Inspector General of Police,
Kalutara District,
Kalutara

2. Prof. S.T. Hettige

Chairman,
National Police Commission,
Block No. 9,

BMICH Premises,
Baudhaloka Mawatha,
Colombo 7

3. **D.M. Saman Dissanayake**
Secretary,
National Police Commission,
Block No. 9,
BMICH Premises,
Baudhaloka Mawatha,
Colombo 7

4. **S.D. Wijesekere**
Member,
National Police Commission,
Block No. 9,
BMICH Premises,
Baudhaloka Mawatha,
Colombo 7

5. **Y.L.M. Zawahir**
Member,
National Police Commission,
Block No. 9,
BMICH Premises,

Baudhaloka Mawatha,

Colombo 7

6. Tilak Collure

Member,

National Police Commission,

Block No. 9,

BMICH Premises,

Baudhaloka Mawatha,

Colombo 7

7. Gaminie Nawarathne

Member,

National Police Commission,

Block No. 9,

BMICH Premises,

Baudhaloka Mawatha,

Colombo 7

8. Ashoka Wijethilaka

Member,

National Police Commission,

Block No. 9,

BMICH Premises,

Baudhaloka Mawatha,

Colombo 7

9. G. Jeyakumar

Member,

National Police Commission,

Block No. 9,

BMICH Premises,

Baudhaloka Mawatha,

Colombo 7

10. H.K.S. Shantha Kumara

Officer in Charge,

Wadduwa Police,

Wadduwa

11. Ashoka Weerakkody

Assistant Superintendent of Police,

Police Head Quarters,

Colombo 1

12. Hon. Attorney General

Attorney General's Department,

Colombo 12

RESPONDENTS

BEFORE : Murdu N.B. Fernando, PC. CJ,
P. Padman Surasena, J. &
A.H.M.D. Nawaz, J.

COUNSEL : Vishwa Gunaratne for the Petitioner
Dilshan Jayasuriya with Dushinka Nelson and
Devaka Jayasuriya instructed by Lahiru Opatha
for the 1st Respondent
Suren Gnanaraj SSC for the Hon. Attorney
General

Argued on : 18.02.2021
Decided on : 25.07.2025

A.H.M.D. Nawaz, J.

1. In the instant application the Petitioner has invoked the jurisdiction of this court disputing the order of transfer dated 17.03.2019, effected by the Inspector General of Police subject to the approval of the National Police Commission on the basis that the said order has been made in violation of the Petitioner's fundamental rights guaranteed under Article 12 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.
2. The Petitioner contends that the 1st Respondent has engaged in continued malicious and unreasonable conduct towards the Petitioner, including the making of baseless allegations to the Inspector General of Police and the

National Police Commission. According to the Petitioner, this conduct has precipitated repeated transfers, including to supernumerary positions. In these circumstances, the Petitioner invites this Court to find that the cumulative acts of the 1st to 12th Respondents have given rise to an imminent infringement of the Petitioner's fundamental rights under Article 12(1) of the Constitution. The Petitioner further seeks a permanent order staying the operation of the document marked "X4", which orders the Petitioner's transfer from the post of Officer-in-Charge of the Wadduwa Police Station to ordinary police duties at the Gampaha Police Station.

3. I take the view that the long litany of complaints contained in the petition requires a careful examination of several fundamental issues, namely
 - (a) whether there existed an imminent infringement of the Petitioner's fundamental rights as a result of an executive or administrative action, thereby entitling the Petitioner to invoke the jurisdiction of this Court.
 - (b) whether, as alleged by the Petitioner, the 1st Respondent played a role in effectuating the impugned transfer, reflected in document marked "X4", dated 17 March 2019?
 - (c) the futility of the relief sought by the Petitioner; and
 - (d) the conduct of the Petitioner with respect to the allegation of undue influence.

Was there an imminent infringement of the Petitioner's fundamental rights due to an executive or administrative action so as to enable him to seek relief under Article 126 of the Constitution?

4. The Petitioner's case, as presented to this Court, is that the transfers effected and/or the imminent transfer of the Petitioner amount to an infringement of his fundamental rights. Leave was granted to the Petitioner to proceed on the alleged violation of Article 12(1) of the Constitution. The transfer order dated 17.03.2019, directing the Petitioner to perform normal police duties on exigencies of service, forms the fulcrum of the Petitioner's complaint.
5. The affidavit submitted by the acting Inspector General of Police dated 04.09.2020 categorically sheds light on the sequence of events that unfolded prior to and after the Petitioners impugned transfer order dated 17.03.2019. At paragraph 16 of the said affidavit the acting Inspector General of Police averred that by the letter dated 26.02.2019 (marked "R2" and appended to the affidavit), the Secretary to the Ministry of Defence informed the then Inspector General of Police that information had surfaced to the effect that the Petitioner (the Officer-in-Charge of the *Wadduwa* police station at the time) was engaging in alleged acts of corruption and ill-suited conduct. Through the aforementioned letter, the Secretary to the Ministry of Defence requested that the Petitioner be transferred and deployed for normal duties in another police division. A personal record of the Petitioner was also requested by the same letter.
6. In reply, the then Inspector General of Police by the letter dated 12.03.2019 (marked "R3" and appended to the affidavit), forwarded a detailed report in respect of the prior conduct of the Petitioner with a recommendation

that the Petitioner be transferred to the *Gampaha* Police Station to carry on with regular police duties.

7. Subsequently, the Secretary to the Ministry of Defence along with the letter dated 13.03.2019 (marked “R4” and appended to the affidavit) forwarded the letter of the then Inspector General of Police dated 12.03.2019 to the National Police Commission seeking approval for the transfer of the Petitioner from his position as the Officer-in-Charge of the *Wadduwa* Police Station to carry out regular duties at the *Gampaha* Police Station.
8. Thereafter, the National Police Commission by a decision arrived at on 14.03.2019 (marked “R5” and appended to the affidavit) approved the transfer of the Petitioner and the appointment of the 10th Respondent as the Officer-in-Charge of the *Wadduwa* Police Station.
9. There existed sufficient material before the National Police Commission effected the transfer and having examined the process that was followed in arriving at the decision to transfer the Petitioner to the *Gampaha* Police Station, this court sees no breach of protocol or *mala fides* on the part of the National Police Commission in approving the transfer of the Petitioner. Furthermore, this court emphatically notes that the Petitioner has in both the Petition and the written submissions, conceded that the National Police Commission is an independent institution established for the protection of the rule of law. No allegation of malice or *mala fides* is made against the National Police Commission except for the fact that it did not afford him an opportunity to be heard. Given that the transfer was made on exigencies of service and the Petitioner was in a transferable service,

the question of transfer was a condition of service consensually agreed upon by the Petitioner and enforcement of this consensual condition without inquiry or opportunity to show cause does not violate the principles of natural justice-for comparable jurisprudence across the Palk Strait on consensual conditions of service or alteration thereof -see *Himachal Pradesh Road Transport Corporation v Hukam Chand*.¹

10. Be that as it may, I take the view that there is no evidence of malicious intent or unfair treatment on the part of the National Police Commission or the then Inspector General of Police, such as would amount to an “*infringement or imminent infringement by executive or administrative action of any fundamental right*” within the meaning of Article 126 of the Constitution. Accordingly, no relief would lie against the Inspector General of Police or the National Police Commission.
11. It then remains to be considered whether any relief is warranted as against the 1st Respondent-the Deputy Inspector General of Police.

The alleged involvement of the 1st Respondent in the impugned transfer dated 17.03.2019.

12. In his prayer, the Petitioner seeks an order declaring that “*the collective acts*” of the 1st to 12th Respondents have caused an imminent infringement of his fundamental rights. Having found that the procedure adopted in effecting the impugned transfer was not tainted by malicious intent, I now turn to examine the reasons why the Petitioner’s assertion that the 1st

¹ (2009) II SCC 222, 224-225 (para 13).

Respondent colluded with the Inspector General of Police and the National Police Commission to effect his transfer is misconceived.

13. A preliminary objection was put forth by the learned Counsel for the 1st Respondent that as per the powers granted to the National Police Commission by virtue of the Constitution, read together with the Gazette Notification bearing No. 2016/6 dated 24.04.2017, the 1st Respondent has not been vested with the power or authority to make decisions regarding the transfer of Officers-in-Charge of Police stations and that therefore the 1st Respondent played no role in causing the transfer of the Petitioner and furthermore that the 1st Respondent has erroneously been cited as party to the present application.

Article 155J of the Constitution reads as follows:

(1) The Commission may, subject to such conditions and procedures as may be prescribed by the Commission, delegate to the Inspector-General of Police or in consultation with the Inspector-General of Police to any Police Officer, its powers of appointment, promotion, transfer, disciplinary control and dismissal of any category of police officers.

(2) The Commission shall cause any such delegation to be published in the Gazette.

14. Pursuant to the aforementioned article, by the Gazette Notification bearing No. 2016/6 dated 24.04.2017, the National Police Commission has delegated certain powers to the Inspector General of Police and Senior Deputy Inspector Generals of Police including the power to transfer Chief Inspectors provided they are not Officers-in-Charge of Police Stations.

15. It is especially significant to the present matter that the National Police Commission has retained the power to effectuate transfers of Officers-in-Charge of Police Stations as the Petitioner was, at the time the impugned transfer was ordered, the Officer-in-Charge of the Wadduwa Police Station.

It is therefore clear that the 1st Respondent could not have legally authorized or ordered the transfer of the Petitioner.

16. In fact, all parties to the present application, including the Petitioner have admitted and conceded the fact that by virtue of the Gazette Notification bearing No. 2016/6 dated 24.04.2017, the 1st Respondent did not have the power or legal authority to order the transfer of the Petitioner.
17. In any case, the Petitioner has failed to prove any logical nexus between the 1st Respondent and the procedure involving the National Police Commission and the Inspector General of Police who made the decision regarding the impugned transfer order. There is no evidence before this court to arrive at the conclusion that the 1st Respondent asserted undue influence in order to have the Petitioner transferred.
18. The correspondence between the Secretary to the Ministry of Defence, the then Inspector General of Police and the National Police Commission presented to this court along with the affidavit of the acting Inspector General of Police sufficiently evinces this fact. In these circumstances, this court refuses to hold the 1st – 12th Respondents as having collectively infringed the fundamental rights of the Petitioner.

The nugatory nature of the relief prayed for by the Petitioner — the futility question

19. Even assuming the circumstances were to favour the Petitioner and this Court were to conclude that his fundamental rights had in fact been infringed, the relief sought by the Petitioner would nonetheless be nugatory. This is because the Petitioner has since been transferred on two

further occasions: first, to the Western Province (South) Traffic Division on 13.07.2019, and thereafter to the Special Investigation Unit of the Mirihana Police Station on 18.07.2019. The Petitioner has not challenged these subsequent transfers. Accordingly, any order staying the impugned transfer to the Gampaha Police Station — which preceded these later transfers — would have no material effect on the Petitioner's present position. It would serve no purpose and would be futile to grant a permanent stay of the impugned transfer, as that transfer has since been superseded and replaced by subsequent transfers, rendering any prospective relief both otiose and nugatory. In any event, for the reasons set out above, the Court finds that the challenged transfer does not infringe Article 12(1) of the Constitution.

20. In *Selvamani v. Dr. Kumaravelupillai and Others*,² Sisira de Abrew, J. highlighted the futility of the relief sought by a Petitioner who only challenged his demotion, but was subsequently sent on vacation of the post.

"The petitioner by this application also moves for a writ of mandamus on the first respondent directing that the petitioner be restored to his earlier position i. e. to the post of Project Operator. Even if this application of the petitioner is granted, he is not entitled to resume his earlier office in view of the order of vacation of post (3R9A). Therefore, issuing a writ of mandamus in this case would be futile. In the case of Sethu Ramasamy Vs. Moregodd Gunasekara J. observed that "A mandamus will not be granted when it appears that it would be futile". In the case of Samsudeen Vs Minister of Defence and External Affairs L. B. de Silva J too remarked that "A writ of mandamus will not be issued if it will be futile to do so and no purpose will be served". In the case of Gunasinghe

² (2005) 2 Sri.LR 99.

Vs. Mayor of Colombo De Kretser J. stated that “A mandamus will not be issued when it appears that it would be futile in its result”. In the case of Eksath Engineru Saha Samanya Kamkaru Samithiya Vs. S. C. S. de Silva mandamus was sought to compel three respondents, the members of an Industrial Court, to function as an Industrial Court. By the time the application was heard by the Court all three members had ceased to hold office as members of the Court. The writ was refused because parties obviously cannot be ordered to do what they are not qualified to do and are therefore unable to do. Applying the legal principles stated in the aforesaid decisions, I hold that the mandamus will not be granted when it appears that it would be futile.”

21. I therefore hold that the relief sought by the Petitioner, if granted, in any case would be of no value in law and therefore would not serve any material purpose in changing the status quo of the Petitioner.

22. At this juncture it is pertinent to mention that the Petitioner has since been interdicted after his transfers since 17.03.2019 but I will not venture into details of the interdiction and subsequent developments since it is immaterial to the order sought to be challenged in this case.

The conduct of the Petitioner on the issue of undue influence.

At paragraph 29A of the Petition, the Petitioner admits that when he received a transfer order to a supernumerary position in *Mount Lavinia* at the time he was serving as the Officer-in-Charge of the *Kaluthara North* Police Station, twenty two head priests and other dignitaries intervened in stopping the said transfer.

However, a perusal of the said transfer order marked “X12” indicates that it was ordered on “exigencies of service with the approval of the National Police Commission.” Thus, it warrants a conclusion that this transfer order was part of a routine transfer procedure purely based on a service requirement. In the Affidavit provided by the acting Inspector General of Police it is asserted that

contrary to the averments of the Petitioner that the said transfer was ill-motivated, the Petitioner had in fact sought to canvass the support of priests and other dignitaries to reverse a lawful transfer order issued to him. He had not reported to service at *Mount Lavinia* and had proceeded to exert undue influence to get a transfer from *Kalutara North* to *Wadduwa*.

This court takes the view that by his prior conduct the Petitioner has himself undermined the very rationale of the National Police Commission which he sought to rely on by stating that it was introduced for the purposes of depoliticizing institutions, strengthening the rule of law and promoting good governance in the country and that the undue influence of the 1st Respondent influenced the impugned transfer order dated 17.03.2019. It seems rather ironic that the Petitioner has come to court seeking justice with unclean hands.

In these circumstances, I take the view that the application of the Petitioner is unmeritorious and it is therefore dismissed.

JUDGE OF THE SUPREME COURT

Murdu N.B. Fernando, PC, CJ

I agree.

CHIEF JUSTICE

P. Padman Surasena, J.

I agree.

JUDGE OF THE SUPREME COURT