

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 Writ of *Certiorari*, Writ of *Mandamus* and Writ Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/WRIT/540/25

Hewa Gajaman Kankanamage Sabeeth
Chathuran,
No. 6B/6,
Agriculture Quarters,
Gannoruwa, Peradeniya.

PETITIONER

Vs.

1. Chairman,
Transfer Board,
Forest Department,
Sampathpaya, 82,
Rajamalwatta Road,
Sri Jayawardanepura, Kotte.
2. Conservator General of Forests,
Forest Department,
Sampathpaya, 82
Rajamalwatta Road,
Sri Jayawardanepura Kotte.
3. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J
Mahan Gopallawa, J

Counsel: Dasun Nagashena with Shihara Ekanayaka instructed by Jayamuditha Jayasooriya for the Petitioner.
R. Aluwihare SC for the Respondents.

Supported on: 01.07.2025

Decided on: 25.07.2025

Mayadunne Corea J

The Petitioner has sought among other things the following reliefs:

- “b. Grant and issue a mandate in the nature of a writ of Certiorari to quash the transfer decision of the Board of Appeal and/or the Conservator General of Forests dated 09.05.2025.*
- c. Grant and issue a mandate in the nature of a writ of Prohibition restraining the Respondents from giving effect to the impugned transfer decision of the Board of Appeal and/or the Conservator General of Forest dated 09.05.2025.*
- d. Grant and issue a mandate in the nature of a writ of Mandamus directing the Respondents to implement the provisions of the transfer procedure and the Gazette Extraordinary No. 2310/29 dated 14.12.2022.”*

The facts of the case are briefly as follows. The Petitioner is a Beat Officer attached to the Forest Department and he has been serving in the Senkadagala Beat within the Kandy Range in the Kandy District. However, he had been subsequently transferred to the Udagathwawa Beat in the Hunasgiriya Range and as a result of him appealing the transfer, he has been transferred to the Udawattakele Conservation Centre. He alleged that once

transferred to the Senkadagala Beat he could have served for a period of five years at the said Range. It is his contention that without him seeking a transfer and before the expiry of five years at the Senkadagala Beat he cannot be transferred. Hence the argument that his transfer is bad in law and hence, this Writ Application.

The Petitioner's contention

The Petitioner submits that as per the Gazette that provides for transfer procedures dated 12.12.2022 he can remain in the same station for a period of five years and accordingly, the decision to transfer him within the period of five years is bad in law.

The Respondents' objections

The Respondents among other things raised the following objections:

- The Petitioner's prayer is vague.
- Necessary parties are not before Court.
- On appeal the Petitioner has been given another transfer and therefore, prayer D and C are futile.

Analysis

This Court will now consider the Respondents' objections along with the Petitioner's submissions.

The parties are not at variance that the Petitioner is in the public service of Sri Lanka and his transfers are governed by the Public Service Commission Procedural Rules (herein referred to as 'PSC Rules').

The question before this Court is whether the Petitioner once transferred to a Beat is entitled as of a right to work in the same place for a period of five years and if so, whether any transfer made within that period of five years is bad in law.

The Petitioner has been appointed as a Beat Officer to the Forest Department on 01.03.2000 and by letter dated 05.06.2023 he had been transferred to the Senkadagala Range in the Kandy District (P2). Subsequently, on 20.02.2025 he had been served with another transfer assigned to the Udaththawa Beat in the Hunasagiriya Range (P3). It is not disputed that the said transfer was made just few months short of the Petitioner completing two years in the Senkadagala Range. Upon receipt of the said transfer, the Petitioner appealed to the Board of Appeal (herein referred to as “BOA”) (P4). After consideration of his appeal, the BOA had stopped his transfer to the Udaththawa Beat and has transferred him to the Udawattakele Conservation Centre effective from 10.05.2025. However, by letter dated 09.05.2025 the transfer has been deferred and the Petitioner has been informed that his transfer would be effective from 14.05.2025 (P6).

The Petitioner’s main contention is that he has not sought for a transfer and accordingly he’s entitled to serve in a work place for a period of five years.

The transfer of the Petitioner

To get a better understanding on the Petitioner’s contention, now I will consider the letter of appointment of the Petitioner which is marked as P1. The said letter of appointment specifically deals with the question as to whether the Petitioner’s job is transferable. I have given careful consideration to paragraph 6 of the letter of appointment. The said paragraph states as follows:

“06. සේවය කරන ලදී ඔබට නියම කෙරෙන දිවයින් කටර පැදේශයක වුවද ඔබ සේවය කළ යුතුය.”

Hence, it is observed that the Petitioner is engaged in a transferable job. The Petitioner was aware when he accepted the position that his job is transferable and he was bound to serve in any place within the island. Further the said letter of appointment does not entitle the Petitioner to be placed in a station as of a right for a period of five years. However, the Petitioner contended that once transferred he’s entitled to stay in the said transferred place for a period of five years. This contention is based on P8, which is a Gazette Notification bearing No. 2310/29 and dated 14.12.2022 which are Regulations under the Public Service Commission (herein referred to as the ‘PSC’). The attention of the Court is drawn to the subheading of “annual transfers”. It was the contention of the Petitioner that for a transfer, the transferee should make an application seeking for a transfer and in the absence of such,

the transferee is entitled to serve for five years in one station. This argument is made pursuant to document marked as P7 clause 5.1 (xi). It is the contention of the Petitioner that the said clause gives the Petitioner the right to remain in one place for a period of five years. Hence, the argument that once he was transferred in 2023 to the Senkadagala Beat he was entitled to be attached to the said Beat for a period of five years unless he requested for a transfer. It is his contention that he had not sought a transfer within the said five year period. Thereby it is contended that transferring him to another Beat in 2025 which is slightly less than two years from his previous transfer is bad in law. This would be an appropriate time to consider the said provision relied on by the Petitioner. The said clause states as follows:

“5.1

(xi) කිසියම ජේවා ස්ථානයක වසර 05 ට වඩා අවශ්‍යව දි සිටිමට ඉඩදෙනු නොලැබේ.
සේවා අවශ්‍යතාවය මත කෙටි කාලීන පැවරුම සඳහා සේවා ස්ථානයෙන් බාහිර සේවා සේවා ස්ථානයක සේවය කිරීමට යොමු කළ කාලය මෙම කාලයට ගණන් ගනු ලැබේ.”

A close consideration of the said clause, which the Petitioner is relying on, in my view states that a party is not allowed to stay in one station for a period of more than five years. However, it does not state that an employee as of a right can remain in one station for a period of five years. Hence, the Petitioner’s contention that as per P7 he is entitled as of a right to remain in one station for a minimum period of five years unless a transfer is sought and any transfer made without such an application in less than five years will make it bad in law is a not tenable.

It is also pertinent to note that the Petitioner has failed to submit any other documents to establish that as of a right he is entitled to remain in any station up to a period of five years. Hence, in my view the Petitioner’s contention of seeking a Writ of *Certiorari* to quash the transfer on the basis that he has not completed his five-year term has to fail. It is apparent that what the clause intended is to discourage the employees from remaining in one station for a period of more than five years. However, the clause does not provide a right to an employee to remain in one station for a period of five years.

The Petitioner relied on the transfer procedure in the Gazette marked P8. However, he failed to bring to the attention of this Court a single provision that confers a right on an employee to stay in one station for a period of five years. Accordingly, the Petitioner’s main contention of seeking a Writ of *Mandamus* on the basis that he has a legal right and the

Respondents have a legal obligation to keep him in one station for a period of five years has to fail.

This would be an appropriate stage to consider the objections of the Respondents.

Is the Petitioner's application futile?

For completeness it is pertinent to observe that the Petitioner is seeking to quash the letter dated 09.05.2025(P6) through which the BOA decision has been communicated to the Petitioner. The BOA decision arose as a result of the Petitioner receiving his transfer order marked under P3, where he was transferred to the Udaththawa Beat. Subsequent to the said transfer order, the Petitioner has made an appeal to the BOA to get the said transfer cancelled. The said appeal which is marked as P4 is based on 3 main grounds. They are that the Petitioner has served only for a period of two years, due to the illness of his daughter and due to a few problems in his personal life. Accordingly, he had made this appeal to get his transfer to Udaththawa Beat cancelled. The BOA had considered the said grounds and issued P5. Whereby the Petitioner's request had been allowed and transfer to the Udaththawa Beat was cancelled and he was transferred to the Udawattakele Conservation Centre by letter dated 07.03.2025 (P5). However, this letter too has been cancelled by letter dated 09.05.2025(P6) and accordingly by the said letter several officers have received new transfers to different Beats. However, the cancellation of the Petitioner's transfer to the Udaththawa Beat and his subsequent transfer to the Udawattakelle Conservation Centre had not been affected. This is the purported letter the Petitioner seeks to quash.

The Petitioner by his Amended Petition is seeking to quash letter dated 09.05.2025 (P6). By this letter he is transferred to the Udawattakele Conservation Centre. However, the Petitioner has not sought to quash the transfer order marked as P5 which was cancelled by P6. By the said letter P5, the Petitioner upon his appeal has been transferred to the Udawattakele Conservation Centre. Hence, in the absence of any prayer to quash P5, if this Court is to quash P6 the result would be that the Petitioner would still be stationed in the Udawattakele Conservation Centre. Thus, making this Writ Application futile. Even if this Court is to issue a Writ of Prohibition preventing the Respondents from transferring the Petitioner, what would prevail is the transfer order in P5, which would once again result in the Petitioner serving in the same Udawattakele Conservation Centre.

The Court has held time and again that where an Application is futile a propagative Writ shall not be granted. His Lordship Saleem Marsoof P/CA (as he was then) held in ***Ratnasiri and others v. Ellawala and others (2004) 2 SLR 180*** that

“This Court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of a right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that “A writ... will not issue where it would be vexatious or futile.”

Hence, we observe that prayer B and C becomes futile.

Through prayer D, the Petitioner is seeking a Writ of *Mandamus* to implement the transfer procedure as reflected in Gazette marked as P8. However, as stated above, the Petitioner failed to demonstrate that he has a right to stay in one station for a period of five years and the Respondents are obliged by law to retain him in one station for a period of five years. In the absence of such, I cannot agree with the Petitioner’s contention that there is any violation of the transfer procedure as stipulated in the Gazette. The Petitioner has failed to demonstrate that he has a right to stay in the same station for a period of five years.

In **Perera vs National Housing Development Authority (2001)3 SLR50** the Courts held,

“On the question of legal right, it is to be noted that the foundation of mandamus is the existence of a right. (Napier Ex parte). Mandamus is not intended to create a right, but to restore a party who has been denied his right to the enjoyment of such right. A “Mandamus” will lie to any person or authority who is under a duty (Imposed by statute or under common Law) to do a particular act, if that person or authority refrains from doing the act or refrains for wrong motives from exercising a power which is his duty to exercise. The Court will issue a Mandamus to do what he should do. (R v. Metropolitan Police Commissioner121 at 719.) (See also Commissioner o j Police v. Gordhandas131).”

The Petitioner has failed to demonstrate the alleged statutory duty on the Respondents to keep him in the same Beat for a period of five years. Hence in my view prayer D has to fail.

Conclusion

Accordingly, for the above stated reasons, I am of the view that the Petitioner has failed to establish a *prima facia* case for the issuance of notice. Accordingly, I decline to issue formal notice and proceed to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal