

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 Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 77/2018

Herath Mudiyanse Indika Nalin
Jayasekera,
No. 29/40, Ampitiya Road,
Nuwarawela, Kandy.

On behalf of
Sandinsa Sithumli Jayasekera (Minor)

PETITIONER

Vs.

1. I. Withanachchi,
Principal,
President of Interview Board,
Mahamaya Girls School, Kandy
2. W.M.D.T.P. Wanasinghe,
President,
Interview Appeals Board,
Principal,
Dharmaraja College, Kandy.

3. Sunil Hettiarachchi,
Secretary, Ministry of Education.
4. W.M. Jayantha Wickramanayake,
Director of National Schools.
5. Hon. Akila Viraj Kariyawasam,
Minister of Education,

3rd - 5th Respondents at
Ministry of Education,
Isurupaya, Battaramulla.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Yasantha Kodagoda, P.C., J/ President of the Court of Appeal
Arjuna Obeyesekere, J

Counsel: Lakshan Dias with Ms. Dayani Panditharatne for the Petitioners

Nayomi Kahawita, State Counsel for the Respondents

Argued on: 8th May 2019 and 10th July 2019

Written Submissions: Tendered by the Petitioner on 21st August 2019

Tendered by the Respondents on 16th August 2019

Decided on: 13th December 2019

Arjuna Obeyesekere, J

In this application, the Petitioner is challenging the decision of the 'Appeals Board' chaired by the 2nd Respondent, Principal, Dharmarajah College, Kandy to reject the application made by the Petitioner seeking admission of his daughter to Grade One of Mahamaya College, Kandy for the year 2018.

The facts of this matter very briefly are as follows.

The Director General of Health Services had appointed the Petitioner as a Public Health Inspector with effect from 20th June 2000 and had thereafter assigned the Petitioner to the Office of Deputy Director of Health Services Ampara, North - East Province.¹ Pursuant to an inter-province transfer granted to the Petitioner, the Petitioner had been released from his post of Public Health Inspector, Dehiattakandiya in the Eastern Province with effect from 11th July 2016. The Petitioner states that he reported for duty at the Department of Health Services – Central Province on 14th July 2016 and was temporarily assigned to the Office of the Medical Health Officer, Wilgamuwa in the Matale District, in the capacity of a Public Health Inspector.²

The Petitioner states that in June 2017 he submitted an application, annexed to the petition marked '**P2**', seeking admission of his daughter to Grade One of Mahamaya College, Kandy. Admission of students to Grade One of Government Schools for the year 2018 was governed by Circular No: 22/2017 issued by the Ministry of Education. The said Circular has been annexed to the

¹ Vide letter annexed to the petition marked 'P3A' issued by the Provincial Director of Health Services, North-East Province.

² Letter dated 15th July 2016 annexed to the petition marked 'P3D'.

petition marked 'P4'. According to 'P4', for the year 2018 the maximum number of students that can be admitted to a single class was limited to 38. Of this 38, a maximum of 5 slots were reserved for the children of those serving in the Armed Forces and the Police Force. After making provision for the said reservation, the rest of the vacancies are allocated under the following categories:

	Category	Percentage of the vacancies
1	Children of residents in close proximity to the school	50%
2	Children of parents who are Past Pupils of the school	25%
3	Brothers /sisters of students who are already studying in the school	15%
4	Children of persons belonging to the staff in Institutions directly involved In school education	05%
5	Children of officers in Government/ Corporations/ Statutory Boards/ State Banks receiving transfers on exigencies of service³	04%
6	Children of persons arriving after living abroad with the child	01%

³ රජයේ සේවා අවශ්‍යතා මත ස්ථාන මාරුවීම් ලැබූ රාජ්‍ය/කංස්ටා /ව්‍යවස්ථාපිත මණ්ඩල/රාජ්‍ය බංකු නිලධාරීන්ගේ දරුවන්

The Petitioner had sought admission of his daughter to Grade One under category No. 5, namely, '*Children of officers in Government / Corporations / Statutory Boards / State Banks receiving transfers on exigencies of service.*'

The criteria for selection under the above category are set out in Clause 6.5(a) of the said Circular, which reads as follows:⁴

“ මෙම ගණය යටතේ රජයේ/සංස්ථා/ව්‍යවස්ථාපිත මණ්ඩල/රජයේ බැංකු නිලධාරීන්ගේ ඉල්ලීම මත නොව රජයේ/ආයතනයේ සේවා අවශ්‍යතා මත අයදුම්පත් භාර ගන්නා අවසන් දිනට පෙර වසර 05 ක කාලයක් ඇතුළත පාසල පිහිටි ප්‍රදේශය තුළ ස්ථාපිත ආයතනයකට ස්ථාන මාරුවීම් ලැබී ආපසු භාර ගැනීමෙන් පසුව පාසලේ පෝෂිත ප්‍රදේශය තුළ පදිංචි ව සිටින්නේ නම් පමණක් ඉල්ලුම් කළ හැකිය.

මෙහි දී පාසල පිහිටි ප්‍රදේශය යනුවෙන් අදහස් වන්නේ අදාළ පාසල කේන්ද්‍රය කර කිලෝ මීටර් 10 ක් අරය ලෙස ගෙන අදින වෘත්තකය සීමාව තුළ අදාළ ආයතනය පිහිටා තිබීම වේ. (අදාළ සීමාව තුළ ප්‍රමාණවත් අයදුම්පත් ලැබී නොමැති නම් සම්මුඛ පරීක්ෂණ මණ්ඩලයට මෙම සීමාව වැඩි කර ගත හැක). එමෙන් ම පෙර සේවා ස්ථානය පිහිටා ඇති ප්‍රදේශයේ දරුවා ද සමග පදිංචි ව සිටි, නව සේවා ස්ථානයට අදාළ පදිංචි ස්ථානයට දරුවා සමඟ පැමිණිය යුතු ය. භව ද, අවසානයට ලද ස්ථාන මාරුව පමණක් සලකා බලනු ඇත. එමෙන් ම, අනුයුක්ත කිරීම්, පුහුණු පාඨමාලා හා අධ්‍යයන කටයුතු සඳහා පදිංචිය වෙනස් කිරීම් ආදිය මේ යටතේ සලකනු නොලැබේ.”

Thus, in order to be eligible to apply under this category, the following criteria must be satisfied:

⁴ The English text of Clause 6.5 (a) reads as follows: "Under this category applicants who are permanently residing with the child in the area where the school is located after being transferred to a statutory institute within the area on exigencies of service during a period of 05 years prior to the date of calling for applications and not at the request of the particular employee, may apply for this purpose.

Here the area of school means the relevant institute should be located within a circle drawn with a radius of two kilometers having taken the school as the center. (If interview board requires this circle could be extended as suitable) The applicant should come to the new place of residence with the child from the previous place. Moreover, final place of work shall be considered. Change of residency due to attachments, training programs and study purposes shall not be considered"

- a) The applicant should be an officer of the Government or a Statutory institution;
- b) The transfer should be on the basis of exigencies of service of the Government or the Statutory Institution;
- c) The transfer must not be at the request of the applicant;
- d) The applicant should have accepted the appointment at the place to which he was transferred;
- e) The transfer should have taken place during a period of 5 years prior to the date of calling for applications;
- f) The new place of work should be situated within an area of 10km from the school;
- g) The applicant and the child should be resident within the feeder area of the school;
- h) The applicant should have been resident with the child whose admission is sought in the area of the previous place of employment;
- i) The child whose admission is sought should have moved with the parent to the new place of work of the parent.

The Petitioner states that he presented himself for an interview held on 11th September 2017, and that he was allocated 95 marks in accordance with the marking scheme applicable to the above category, in the following manner:

Criteria	Maximum mark	Marks assigned to the Petitioner
Distance from previous place of work to the new place arrived on transfer ⁵	40	40
Proximity to the school from the place of residence after the mother/ father/ legal guardian had come on transfer. ⁶	35	30
For the period of service as a Government/ Corporation/ Statutory board /State Bank Employee – One mark per year.	10	10
The time that has lapsed from the date of the transfer up to the closing date of application. ⁷	05	05
Un-utilized Leave ⁸	10	10
Total	100	95

⁵ Marks are given according to the distance, as follows: "More than 150 km -40 marks; From 149 Km to 100 km -32 marks; From 99 Km to 50 km -24 marks; From 49 Km to 25 km -16 marks; Less than 25 km -08 marks."

⁶ The Circular specifies that "maximum marks will be given if there are no other Government Schools with Primary sections located closer to the present place of residence than the school applied for. In the event of having other Government schools with primary sections for the admission of the child which are closer to the place of residence than the school applied for marks will be deducted at the rate of 05 marks from the maximum marks for each such closer school".

⁷ Marks are allocated depending on when the transfer took place, in the following manner – "Within one year - 05 Marks; within 01 year to 02 years - 04 Marks; within 02 years to 03 years - 03 Marks; within 03 years to 04 years - 02 Marks; within 04 years to 05 years - 01 Mark."

⁸ For un-utilized leave during the calendar year for 05 years prior to the year of receiving applications – 02 marks for 20 days. (Marks will not be given if the number of un-utilized leave in a year is less than 20 days)

This Court has examined the interim list of applicants that were chosen after the interview, marked 'R3' and observes that while the applicant placed first under the said category had received 100 marks, the other applicants, including the Petitioner had received identical marks. The Petitioner however had been placed third in the waiting list.

Dissatisfied with the said decision to place him on the waiting list, the Petitioner had filed an appeal, as provided for in the Circular 'P4'. The Petitioner states that when the final list of the successful applicants was published after the conclusion of the appeals, he found to his dismay that his daughter's name has been struck off the list and that an applicant who had 93 marks had been selected.

By a letter dated 29th December 2017, annexed to the petition marked 'P10', the 1st Respondent had informed the Petitioner as follows:

“ඔබේ දරුවා වන H.M.S.S. පයසේකර වර්තමාන සේවා ස්ථානය පාසල පිහිටි පෝෂක ප්‍රදේශය තුළ නොපිහිටන නිසා, ඇතුළත් කර ගැනීමට හැකියාවක් නොමැති බව කණගාටුවෙන් දන්වමි. වෙනත් පාසලක් ලබා ගැනීම සඳහා මහනුවර කලාප තාර අධ්‍යයන අධ්‍යක්ෂ වෙත නව අයදුම්පතක් ඉදිරිපත් කරන්න.”

Thus, according to 'P10', the Petitioner's application had been rejected for the reason that the place of work of the Petitioner was located outside the area where the school was situated.

Aggrieved by the said decision, the Petitioner filed this application seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the decision of the Appeals Board contained in the letter dated 29th December 2017 annexed to the petition marked 'P10';
- (b) A Writ of Mandamus directing the 1st and 2nd Respondents to enroll his daughter in accordance with the provisions of Circular No. 22/2017 relating to admission of students to Government Schools.

In the Statement of Objections filed before this Court, the Respondents took up the position that in any event, the Petitioner is not eligible to apply under the said category, since the Petitioner's transfer from the Eastern Province to the Central Province was not on the basis of an 'exigency of service'.

The question that this Court is therefore called upon to determine is whether the decision to reject the Petitioner's application seeking admission of his daughter to Grade One of Mahamaya College, Kandy is in accordance with the scheme contained in Circular No. 22/2017 marked 'P4' and is reasonable, and if not, whether the said decision is liable to be quashed by a Writ of Certiorari. In deciding this question, this Court will first consider the ground for rejection set out in 'P10', and thereafter the aforementioned ground taken up in the Statement of Objections.

In considering this application, this Court will be mindful of the following observations of Lord Diplock in Council of Civil Service Unions vs Minister for

the Civil Service⁹ with regard to the grounds on which a Writ of Certiorari could be granted:

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'¹⁰. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

This Court will now consider whether the Respondents acted outside the Circular 'P4' when it rejected the Petitioner's application on the basis that the

⁹ 1985 AC 374.

¹⁰ Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB 223

place of work of the Petitioner was located outside the area where the school was situated.

There is no dispute that the Petitioner was working in the Eastern Province and that he was released by the Director of Health Services, Ampara with effect from 11th July 2016 to the Central Province.¹¹ The Petitioner had reported for duty at the Office of the Department of Health Services, Central Province situated in Kandy on 14th July 2016. However, due to the service requirements that prevailed at the Office of the Medical Health Officer, Wilgamuwa, Matale, the Petitioner had been temporarily assigned to that Office. The fact that the Petitioner's attachment to Wilgamuwa is on a temporary basis is confirmed by letter dated 15th July 2016, issued by the Medical Health Officer, Wilgamuwa,¹² letter dated 14th June 2017 issued by the Director of Health Services, Central Province,¹³ and letter dated 7th July 2017 issued by the Medical Health Officer, Wilgamuwa.¹⁴

A detailed explanation of the nature of the Petitioner's transfer to the Central Province and thereafter his attachment to the Wilgamuwa Office is set out in the letter dated 8th January 2018 annexed to the petition marked 'P3F' issued by the Director of Health Services, Central Province. Although 'P3F' has been issued after the decision of the Appeals Board and at the request of the Petitioner, it confirms the following matters:

- 1) The Petitioner's permanent place of work is the Kandy District;

¹¹ Vide letter dated annexed 13th July 2016 to the petition marked 'P3B1'.

¹² Annexed to the petition marked 'P3D'.

¹³ Annexed to the petition marked 'P3C'.

¹⁴ Annexed to the petition marked 'P3E'.

- 2) On seniority, the Petitioner was entitled for an appointment within the Kandy District. However, whether the Petitioner would have been entitled to an appointment to an Office within a radius of 10km from Mahamaya College has not been disclosed;
- 3) The Petitioner has been attached on a temporary basis to the Wilgamuwa Office due to the exigencies of service that prevailed in Wilgamuwa.

If the Petitioner's position is to be summarised, it is that while his transfer is from the Eastern Province to the Central Province, his place of work is Kandy, and as his posting to Wilgamuwa is temporary, his daughter is eligible for admission to Mahamaya College Kandy, on the basis that his place of work should be considered as being Kandy.

This Court will now examine the position of the Respondents. As noted earlier, the Petitioner was allocated 95 marks, but was still placed in the waiting list. It was only at the appeal stage that the Petitioner was disqualified by the Appeal's Board for the reasons set out in 'P10'. This Court, having observed that in their Statement of Objections, the Respondents have not sought to support the grounds set out in 'P10' on which the application of the Petitioner was in fact rejected, except for a passing reference that the '*Petitioner was released to serve at the Wilgamuwa Health Services Office with effect from 14.07.2016*', invited the learned State Counsel to inform this Court the "*exact basis upon which the appeal body headed by the 2nd Respondent decided to reject the application presented by the Petitioner ...as possibly reflected in the contemporaneous minutes/records maintained by the 2nd Respondent, and if in fact there is such a record, to tender a certified copy thereof.*"

In response, the learned State Counsel submitted an affidavit dated 8th July 2019 of the present Principal of Mahamaya College, Kandy, to which affidavit was annexed the report of the Appeals Board marked 'R13' which reads as follows:

"මෙදින අභියාචනා හා විරෝධතා මණ්ඩලය ඊස් වු අතර තවදුරටත් ගැටලුකාරී සහගත වු අයදුම්කරුවන්ගේ සේවා ස්ථාන හා පදිංචි ස්ථාන පරීක්ෂා කිරීමට සහාපතිතුමා ඇතුළු අභියාචනා හා විරෝධතා මණ්ඩලය තීරණය කරන ලදි. ඒ අනුව TR 23¹⁵, TR 18, TR 08, TR 10 යන අයදුම්කරුවන්ගේ සේවා ස්ථාන පරීක්ෂාවන් සිදු කළ අතර TR 23 අයදුම්කරු සම්බන්ධව මධ්‍යම පළාත් සෞඛ්‍ය දෙපාර්තමේන්තුවෙන් තොරතුරු ලබා ගන්නා ලදි. මධ්‍යම පළාත් සෞඛ්‍ය අධ්‍යක්ෂ තුමියට අනුව සියලුම වාර්ෂික හා රජයේ සේවා අවශ්‍යතා මත මධ්‍යම පළාතට සිදු කරන ස්ථාන මාරුවීම්වලදි සේවකයන් පලමුව මධ්‍යම පළාත් සෞඛ්‍ය කාර්යාලයට වාර්තා කළ යුතු බවත් ඉන් පසුව එම කාර්යාලය මගින් සේවා අවශ්‍යතාවය මත ඔවුන් වෙතත් කාර්යාලවලට අනුයුක්ත කිරීම් සිදුකරන බවත්ය. ඒ අනුව TR 23 අයදුම්කරු මාතලේ දිස්ත්‍රික්කයට අනුයුක්ත කර එහිදි සේවා අවශ්‍යතාවය මත විල්ගමුව සෞඛ්‍ය කාර්යාලයට අනුයුක්ත කර ඇත. තවද අයදුම්කරු වැටුප් ලබන්නේ විල්ගමුව සෞඛ්‍ය කාර්යාලයෙනි. ඒ අනුව විල්ගමුව සෞඛ්‍ය කාර්යාලය අයදුම්කරුගේ සේවා ස්ථානය බවත් එය 22/2017 වකු ලේඛනයට අනුව පාසලේ සිට 10 km ක් අරයක් තුල පිහිටන පෝෂක ප්‍රදේශය තුල නොපිහිටන බවත් අභියාචනා හා විරෝධතා මණ්ඩලය තීරණය කරන ලදි."

If, as the Appeals Board states, it obtained details from the Department of Health Services, Central Province, the Respondents ought to have made use of the opportunity afforded by this Court, to provide material to substantiate the said position as well as the position in 'P10', especially in view of the contents of the letter marked 'P3F'. However, the Respondents, for reasons best known to them, have chosen not to do so.

¹⁵ TR23 is the number of the Petitioner's application.

This Court will now consider whether the Appeals Board chaired by the 2nd Respondent acted reasonably and in compliance with the provisions of the Circular 'P4' when it rejected the application of the Petitioner on the basis that the Petitioner's place of work is outside the area of the school. As observed above, the position of the Petitioner is that even though he is attached to the Office of the Medical Officer of Health, Wilgamuwa, that it is a temporary attachment, and his permanent place of work is in fact Kandy. This position is confirmed by the letter marked 'P3F'. This Court cannot ignore the position taken up by the Director of Health Services, Central Province in 'P3F' that the Petitioner would have been entitled for an appointment within Kandy and that his appointment to Wilgamuwa is due to an exigency of service and was temporary.

As observed earlier, quite apart from contradicting the contents of 'P3F', the contents of which the Respondents state should be disregarded as it has been prepared after the decision of the Appeals Board, the Respondents have abandoned the ground set out in 'P10' that led the Appeals Board to reject the application of the Petitioner.

In these circumstances, this Court accepts the explanation offered by the Director of Health Services in 'P3F' that the Petitioner was entitled to a posting in Kandy. As the Respondents have failed to produce any material to challenge the truthfulness of the contents of 'P3F' with regard to the place of work of the Petitioner or the basis of his assignment to Wilgamuwa, it is the view of this Court that the decision of the Appeals Board to reject the application of the Petitioner is a decision '*that no sensible person who had applied his mind to*

the question to be decided could have arrived at' and is therefore unreasonable.

This Court will now consider the position taken up by the Respondents in their Statement of Objections that the Petitioner is not eligible to apply under the category of **'Children of Officers in Government ... receiving transfers on exigencies of service'**, for the reason that the Petitioner's transfer from the Eastern Province to the Central Province was not on the basis of an exigency of service.

Even though **'P10'** is silent in this regard, this Court is of the view that it should nonetheless consider whether the Petitioner's transfer to the Central Province was due to exigencies of service or initiated by the Petitioner. This Court is engaging in such an exercise for two reasons.

The first is that, it is mindful that the task before the Interview Board and the Appeals Board is enormous and that it would not be fair to expect those persons functioning on such Boards to exercise the kind of scrutiny that this Court is able to do, especially given the many applications and appeals that they are required to consider in a short period of time. That does not however mean that this Court will ignore obvious cases of transgressions of the provisions of the Circular.

The second reason is that the Petitioner is seeking a Writ of Mandamus directing the Respondents to perform a legal duty by admitting his daughter to Mahamaya College, Kandy. If this Court is to issue a Writ of Mandamus, this Court must be satisfied that the Petitioner has a legal right, and is in fact

eligible to have his daughter admitted to Grade One of Mahamaya College, Kandy under the aforementioned category. It is for this reason that this Court afforded the Petitioner and the Respondents an additional opportunity of placing any material that they wish, with regard to the nature of the transfer of the Petitioner from the Eastern Province to the Central Province.

The learned Counsel for the Petitioner submitted that in terms of the "Procedural Rules of the Public Service Commission on the appointment, promotion and transfer of Public Officers",¹⁶ a transfer can take place in one of the following ways:

- a) Transfers done annually;
- b) Transfers done on exigencies of service;
- c) Transfers done on disciplinary grounds;
- d) Transfers pursuant to mutual requests.

Paragraphs 218 to 221 of the said Rules relate to transfers on exigencies of service and reads as follows:

"218. A Public Officer may be transferred on exigencies of service by the Appointing Authority for any one of the following reasons:

- (i) Where the services of an officer is no longer needed at his present station;*

¹⁶Published in Extraordinary Gazette No. 1589/30 dated 20th February 2009.

- (ii) *Where an officer is needed for service in another station or that particular officer himself is needed;*
- (iii) *Where it is found, due to administrative reasons, that the retention of an officer in his present station is not suitable.*

Even though a transfer can take place in any one of the above methods, Circular 'P4' gives recognition only to the children of those Public servants who have been transferred to another station on the basis of an exigency in service as set out in Rule 218. The rationale for limiting it to this category is simple. A public officer who is well settled with his family at a particular work station and who is all of a sudden asked to report to another station, with his family, to fulfil the requirements of the employer, cannot be left in the lurch as far as the education of his children are concerned. Hence, the preferential treatment given to such public servants, at least as far as the education of their children are concerned. However, no such concession can be given to Public servants who voluntarily and wilfully seek a transfer and it is for that reason that 'P4' makes it abundantly clear that where the transfer was at the request of the applicant, such person shall not be eligible to apply under the said category.

It was the position of the learned State Counsel appearing for the Respondents, as morefully borne out by the Statement of Objections and the supporting affidavit of the 2nd Respondent, Principal, Dharmaraja College, Kandy who was the Chairman of the Appeals Board, that the Appeals Board had meticulously examined the documents submitted by the Petitioner and had discovered that even though the Petitioner had sought admission under

the category of 'Transfers on service exigencies', the Petitioner's transfer had been **at his request** and not on the basis of an exigency of service.

This Court, having examined the documents submitted with the petition, and the documents that have been submitted pursuant to the clarifications sought by this Court on 1st November 2019, observes the following:

- a) The Petitioner had submitted an application seeking a transfer on 9th September 2015. A copy of the said application has been produced by the Respondents, marked 'R14'.
- b) The said application 'R14' contains *inter alia* the following information:
 - (i) The Petitioner's wife is working at the Technical College, Aruppola, within Kandy;
 - (ii) The Petitioner's two elder children are schooling at St. Sylvester's College, Kandy and Wariyapola Sri Sumangala Vidyalaya;
 - (iii) The reason for the transfer is given as follows: "මාගේ මුල් ගම් පළාත් මහනුවර-පිළිමතලාව ප්‍රදේශයේ වෙයි. මීට ඉහත 2008 වසරේ දීද මා ස්ථාන මාරු අපේක්ෂාවෙන් අයදුම් කර ඇත. මාගේ බිරිඳ සහ දරුවන් තිදෙනා මෙන්ම අසනීප තත්වයෙන් පසුවන දෙමව්පියන්ද රුක බලා ගත යුත්තේ මා විසින්ම වන නිසාද දරුවන්ගේ අධ්‍යාපන කටයුතු හේතුවෙන් ද ස්ථාන මාරුවීම අපේක්ෂා කරයි."
- c) The Petitioner's application for a transfer had been recommended by his superior officers subject to a replacement being found through the new appointments (නව පත්වීම් සමඟ මුදා හැරිය හැක).

- d) By letter dated 14th October 2015,¹⁷ the Provincial Director of Health Services, Eastern Province had informed the Secretary, Ministry of Health, Eastern Province as follows: “එමගින් උක්ත නිලධාරී මහතාගේ අත්තර් පළාත් ස්ථාන මාරු අයදුම්පත් මා වෙත යොමු කර ඇත. ඔහු නව පත්වීම් සමඟ මුදා හැරීමට හැකි බවට අම්පාර ප්‍රාදේශීය සෞඛ්‍ය සේවා අධ්‍යක්ෂ විසින් එකඟතාවය පළකර ඇති අතර”
- e) The Provincial Public Service Commission, by its letter dated 27th January 2016 had approved the transfer of the Petitioner to the Central Province.¹⁸
- f) By letter dated 18th February 2016, the Provincial Director of Health Services, Eastern Province had informed the Regional Director of Health Services, Ampara to take necessary action to release the Petitioner from the Eastern Province to the Central Province.¹⁹
- g) By letter dated 22nd March 2016,²⁰ the Regional Director of Health Services, Ampara had informed the Medical Officer of Health, Dehiattakandiya to release the Petitioner to his office in order to give effect to his transfer.
- h) Letter dated 14th July 2016 sent by the Director General of Health Services, who also issued ‘P3F’ confirming that the Petitioner had

¹⁷ This letter has been annexed to the petition marked ‘P3B’.

¹⁸ This letter has been annexed to the motion dated 29th October 2019 filed by the Petitioner.

¹⁹ This letter has been produced by the Respondents marked ‘R16’.

²⁰ This letter has been annexed to the petition marked ‘R17’.

reported for duty on 14th July 2016 and has been assigned to the Wilgamuwa Office.²¹

- i) Each of the above letters, as well as the letters annexed to the petition marked '**P3B1**', '**P3C**' and '**P3F**' are captioned either as 'Inter Provincial Transfer' or 'අන්තර් පළාත් ස්ථාන මාරුව'.

The very nature of a transfer on exigency of service is that it happens without a request by the employee and in order to fulfil the requirements of the employer. It is for that reason that the Rules of the Public Service Commission contain the following provisions, so that this method of transfer cannot be abused by an employer.

- "219. Before a Public Officer is transferred on exigencies of service, the Authority with Delegated Power shall personally satisfy himself that need has actually arisen as specified in Section 218 above and that the transfer cannot be deferred till the next annual transfers.*
- 220. Depending on the nature of the need for services that has arisen, the Appointing Authority may transfer an officer at short notice.*
- 221. The Appointing Authority shall record in the relevant file clearly all the factors that caused the transfer of an officer on exigencies of service. The Appointing Authority shall convey the reasons to the officer concerned."*

²¹ This letter has been produced by the Respondents marked 'R11'.

If the Petitioner had in fact been transferred from the Eastern Province on the basis of an exigency of service, the reasons for such transfer would have been conveyed to the Petitioner in writing. However, no such letter was produced to this Court, notwithstanding this Court directing the Petitioner to produce the letter of transfer issued to him under Rule 221.

In his affidavit dated 15th November 2019, the Petitioner has sought to state that he was brought to Kandy in order to satisfy the exigency of service that prevailed in Wilgamuwa. If that be so, the Petitioner cannot claim that he was entitled to an appointment in the Kandy District and that his attachment to Wilgamuwa was temporary. Furthermore, this argument is contrary to the aforementioned documents, which makes it clear that the transfer process was initiated by the Petitioner himself, a fact that the Petitioner did not disclose to this Court, but which transpired only because this Court called for clarifications from the parties.

The Petitioner having initiated the transfer process, the above documents clearly establish that the Public Sector machinery thereafter processed his application on the basis that it is a 'Inter Provincial Transfer', and not on the basis of a transfer on an exigency of service.

As observed earlier, the position of the Respondents that the Petitioner's transfer was not on the basis of an exigency of service, has been clearly pleaded in paragraphs 5, 7, 8, 10(f) and 12(d) of the Statement of Objections. This Court has examined the Counter affidavit of the Petitioner and find that

except for a mere denial, the said affidavit has not addressed the said issue. In paragraphs 8 – 11 of his affidavit dated 15th November 2019, the Petitioner has sought to 'justify' his position that his transfer was as a result of an exigency. However, in the said averments, having admitted that he made an application, the Petitioner has tried to twist the facts and even gone to the extent of stating that he received his transfer only in July **2017**, when the documents clearly establish that the Petitioner was transferred from the Eastern Province in July **2016**.

There is one other matter that this Court must refer to. The Circular '**P4**' required the Petitioner to have been resident in the Eastern Province with his family including the child whose admission is sought and thereafter to relocate to the Central Province with his entire family. As observed earlier, in his application '**R14**', the Petitioner had admitted that his wife is employed at Aruppola and that his two elder children are schooling in Kandy. These two factors, together with the reason given in '**R14**' for the transfer, can lead to the conclusion that the family of the Petitioner was not living with him in the Eastern Province. Thus, on this ground too, the Petitioner was not eligible to apply under the Transfer category.

The necessity for this Court to quash '**P10**' does not arise in the above circumstances as this Court is satisfied that the Petitioner's transfer from the Eastern Province to the Central Province was not on the basis of an exigency in service. The Petitioner is therefore not entitled to a Writ of Mandamus seeking admission of his daughter to Grade One of Mahamaya College, Kandy under the category of 'Children of officers in Government/

Corporations/ Statutory Boards/ State Banks receiving transfers on exigencies of service'. The application of the Petitioner is accordingly dismissed. Taking into consideration all of the circumstances of this case, this Court makes no order with regard to costs.

Judge of the Court of Appeal

Yasantha Kodagoda, P.C., J
President of the Court of Appeal

I agree

President of the Court of Appeal