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

Bowattegedara Don Isabella
Sriyantha Theja Wijeratne,
No. 25, George E. De Silva
Mawatha, 4th Lane,
Kandy.
Petitioner

CASE NO: CA/WRIT/44/2014

Vs.

1. N. S. Premawansha,
   The Secretary,
   Ministry of Education of the Central
   Provincial Council, Pallekele,
   Kandy.
2. Thilak Ekanayake,
   The Provincial Director of
   Education,
   Department of Education Central
   Province,
   Kandy.
3. M. W. Wijeratne,
   The Zonal Director of Education,
   Zonal Education Office,
   Kandy
   Respondents

4. W. M. S. D. Weerakoon,
   Public Service Commission of the
   Central Provincial Council,
   No. 244, Katugastota Road,
   Kandy.
5. Gamini Rajaratne,
   The Secretary,
   Ministry of Education of the Central
   Provincial Council,
   Pallekele,
   Kandy.
6. T. B. Harindranatha Dunuville,
7. K. Rajasundaram,
8. N. D. Kamal Piumsiri,
9. A. M. R. B. Tennakoon,
   All of Public Service Commission of
   the Central Provincial Council,
   No. 244, Katugastota Road,
   Kandy.
10. M. P. A. Thilakarathna,
    The Secretary,
    Public Service Commission of the
    Central Provincial Council,
    No. 244, Katugastota Road,
    Kandy.
11. Lalith U. Gamage,
    Governor of the Central Province,
    Governor's Secretariat,
    Kandy.

12. P. G. Amarakoon
13. H. M. B. R. Herath,
    Public Service Commission of the
    Central Provincial Council,
    No. 244, Katugastota Road,
    Kandy.
    Added Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Manohara De Silva, P.C., with Nimal Hippola for the Petitioner.
Vikum de Abrew, S.D.S.G., for the Respondents.

Argued on: 16.01.2020

Decided on: 18.02.2020

Mahinda Samayawardhena, J.

The Petitioner, an English teacher employed by the Department of Education functioning under the Ministry of Education of the Central Provincial Council, filed this application against the Respondents seeking to quash by a writ of certiorari the decisions contained in P10, P13, P15, whereby her request/appeal for reinstatement to her teaching post was refused, and to compel the 1st-3rd Respondents by a writ of mandamus to grant no pay leave to her for the period she was overseas, and to allow her to resume duties.

At the time material to this application, the Petitioner had been serving as a teacher at Kandy Sarasavi Uyana Maha Vidyalaya. Her husband, a professor at the Faculty of Engineering of the Peradeniya University, had been granted overseas leave (vacation and sabbatical) from November 2008-November 2010 to work at the University of Malaysia, Malaysia. On 15.12.2008, the Petitioner had accompanied her husband to Malaysia, with their two young children aged four and two and a half years old. She returned to Sri Lanka in October 2011. Her attempt to report for work thereafter was turned down on the basis that her overseas leave application submitted in November 2008 had not been approved.

The Petitioner made several unsuccessful requests/appeals for reinstatement—vide P9, P11, P12, P14, P16.

By P10, P13 and P15, the Provincial Director of Education, the Provincial Public Service Commission and the Governor of the Central Province, respectively, refused her application for reinstatement. It is significant that in P10, P13 and P15—the decisions sought to be quashed in the instant application—no reasons have been given for refusal.

Learned Senior Deputy Solicitor General for the Respondents stated at the argument that it is common ground that the Petitioner's requests/appeals were rejected because the Petitioner had not followed the proper procedure and obtained overseas leave prior to leaving the country, thereby acting in violation of the provisions of the Establishment Code and circulars/letters issued by the Chief Secretary of the Central Provincial Council.

Learned Senior Deputy Solicitor General drew the attention of the Court to the circulars/letters marked R6-R10 tendered by the Respondents to emphasise that (a) the officer shall apply for overseas leave not less than three months before leaving the country; (b) it is the personal responsibility of the officer to get leave approved before leaving the country; and (c) officers who fail to comply with these provisions are liable to disciplinary action.

It is significant that these circulars/letters marked R6-R10 have been issued in the years 2004, 2006 and 2007.

The Petitioner with her counter affidavit tendered the circular/letter issued by the Chief Secretary in September 2008 marked P19. This circular/letter had been issued prior to the Petitioner submitting her leave application. According to this circular/letter, an officer shall hand over a duly filled application to the Zonal Director 14 days before an overseas journey, and the Zonal Director shall if the application is in order immediately send it to the Provincial Director with his recommendations, and the Provincial Director shall tender it to the Secretary to the Provincial Ministry for final approval.

From the documents tendered by the Respondents themselves there is no doubt that the Petitioner complied with her time limit. From R3 and R4 the Zonal Director admits that the Petitioner handed over her leave application to his office in November 2008. As the Zonal Director in R4 informed the Petitioner that her leave application had been sent to the Provincial Director on 05.11.2008, it is clear that the Petitioner submitted the duly

completed application before 05.11.2008. The Respondents do not dispute that the Petitioner left the country on 15.12.2008.

Hence the argument of learned Senior Deputy Solicitor General (which is based on the old circulars/letters) that the Petitioner did not tender her leave application three months before leaving the country and therefore her leave application should not have been entertained is unsustainable.

According to R3 and R4, even one year after the Petitioner's leave application had been submitted by the Zonal Director to the Provincial Director, there was no response from the latter. By R3, about one year after the application had been tendered, the Zonal Director informed the Petitioner, who was presumably abroad at that time, to get personally involved/take a personal interest in getting her leave approved. R3 dated 08.09.2009 reads as follows:

> ඔබ 2008.12.01 දින සිට 2009.12.01 දින දක්වා රැකියාවක් සඳහා විදේශ නිවාඩු ඉල්ලා මහ/සරසවිඋයන මහ විද්‍යාලයෙන් මා වෙත ඉදිරිපත් කර ඇති අයදුම්පත් 2008 නොවැම්බර් මස පළාත් අධ්‍යාපන කාර්යාලයට යවා ඇති අතර මෙතෙක් අනුමැතිය ලැබී නොමැති බැවින් ඒ සඳහා පෞද්ගලිකව උනන්දුවී අනුමැතිය ලබා ගන්නා ලෙස කාරුණිකව දන්වමි.

This is a very sad state of affairs and in my view such attitudes of Government bureaucrats encourage bribery and corruption. If the Provincial Director wanted to refuse the leave application, he could have done so by giving reasons. It is regrettable that until now the Petitioner's leave application has not been refused. There is no document refusing her leave application.

Learned Senior Deputy Solicitor General in his submission drew the attention of the Court to R4 and R5 as documents by which

the Petitioner's leave application was refused. I regret my inability to agree with that contention. Let me explain.

Initially the Petitioner had applied for leave for one year—November 2008 to November 2009. Thereafter, while being abroad, she had sought an extension of leave for another one year—from 06.12.2009 to 06.12.2010. The Zonal Director by R4 refused the application for extension. On what basis did he refuse it? It was refused on the basis that approval from the Provincial Director for the Petitioner's previous leave application, sent more than one year prior, had not been received.

> එතෙර රැකියාවක් සඳහා 2008.12.01 සිට 2009.12.01 දක්වා ඔබ විසින් ඉදිරිපත් කල විදේශ නිවාඩු අයදුම්පත් 2008.11.05 දින පලාත් අධ්‍යාපන කාර්යාලයට යවා ඇතත් මෙතෙක් අනුමැතිය ලැබී නොමැති බැවින් 2009.11.13 දිනැති ලිපියෙන් ඉල්ලා ඇති 2009.12.06 සිට 2010.12.06 දක්වා එතෙර නිවාඩු සංශෝධනය කිරීම නිර්දේශ කල නොහැකි බව කාරුණිකව දැන්වා සිටිමි.

Is this a reasonable basis to reject her second application? In my judgment, it is not. The Petitioner is not responsible for the inaction on the part of the Provincial Director in respect of her first application.

The pivotal argument of learned President's Counsel for the Petitioner is that although she was not allowed to report for duty upon her return to Sri Lanka, she was not sent on vacation of post nor was she informed that she had been dismissed from service. There is no written communication sending the Petitioner on vacation of post. Learned President's Counsel points out that this is a blatant procedural irregularity, which attracts the

invocation of the writ jurisdiction of this Court to challenge the validity of subsequent decisions impugned in this application.

Learned President's Counsel for the Petitioner drew the attention of the Court to P18 Gazette containing "Procedural Rules" issued by the Public Service Commission dated 20.02.2009, which stipulates the procedure relevant to "Vacation of Post" applicable to officers of the Public Service.

Section 172 of P18 reads as follows:

> *A Public Officer who absents himself from duty without informing his Head of Institution as mentioned in Section 171 above shall be deemed to have vacated his post on his own accord. It shall be the duty of his Appointing Authority or Head of Department or Head or Provincial/District/Divisional Head of Department or Head of Institution to inform the officer forthwith as per Appendix 12 by registered post. If the vacation of post notice is issued by an authority other than the Appointing Authority, he shall send copies of the notice to the Appointing Authority and to other relevant authorities.*

Section 174 reads thus:

> *Where the person who vacated post volunteers an explanation in writing to the officer who was the Disciplinary Authority during his time in the public service within three months of the date the vacation of post notice the Disciplinary Authority shall consider his explanation in terms of the respective disciplinary rules. Having considered his explanation, the Disciplinary authority may reinstate him*

> *with or without punishment or refuse such reinstatement. The Disciplinary Authority shall record the reasons for his decision in the respective file clearly and accurately in detail. Further, he shall formally communicate his decisions to the said person.*

In the first place, the Petitioner did not absent herself from duty without informing her Head of Institution. Even assuming she did, according to section 172 quoted above, it is the duty of the Head to inform the officer by registered post forthwith that the officer is deemed to have vacated her post. Thereafter, the officer can, within three months of the vacation of post notice, give an explanation seeking reinstatement to the Disciplinary Authority. The said Authority could reinstate her with or without punishment or refuse such reinstatement, but shall give reasons for the decision "*clearly and accurately in detail*".

Learned Deputy Solicitor General submits that R4 and R5 satisfy this requirement. In other words, it is his submission that R4 and R5 are vacation of post notices/letters. I am not inclined to agree. Undoubtedly R4, which I quoted above, does not contain even a clue with regard to sending the Petitioner on vacation of post. R5 contains a clue. By R5, the Zonal Director informed the Petitioner that unless she reports for duty after the period relevant to the initial application (01.12.2008-01.12.2009), she would be treated as having vacated her post. In my view, there is no definite decision in R5 stating that the Petitioner would be deemed to have vacated her post after a specific date. It cannot be considered a vacation of post notice. The heading of the letter

speaks for itself–it is regarding approval for extension of leave. Let me quote the contents of the letter for better understanding.

> එතෙර නිවාඩු සංශෝධනය මහ/සරසවි උයන මහ විද්‍යාලය - මහනුවර
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> ඔබේ 2009-12-03 දිනැති ලිපිය හා බැඳේ
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> 02. මගේ සමාංක හා 2009-11-26 දින ලිපියේ සඳහන් පරිදි 2008-12-01 දින සිට 2009-12-01 දින දක්වා අයදුම් කර ඇති එතෙර නිවාඩු අයදුම්පත් වලට මෙතෙක් අනුමැතිය ලැබී නොමැත.
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> 03. එබැවින් ඔබ ඉහත ලිපියෙන් ඉල්ලා ඇති එතෙර නිවාඩු සංශෝධනය නිර්දේශ කළ නොහැකි බව දන්වන අතර එතෙර නිවාඩුවෙන් පසු නියමිත දින මහ/සරසවිඋයන මහ විද්‍යාලයේ සේවයට වාර්තා නොකළහොත් ධූරය අතහැර ගියාසේ කටයුතු කිරීමට සිදුවන බවද මෙයින් වැඩිදුරටත් දන්වමි.

As I stated earlier, by R5, the request for extension of leave was refused on a wrong basis, i.e. the delay in approval of the Petitioner's initial leave application.

If a vacation of post notice is served, according to section 174 in P18, the officer is entitled to an opportunity to offer an explanation for reinstatement. Therefore serving of such notice is not a mere formality but peremptory.

Learned Senior Deputy Solicitor General argues that even if a vacation of post notice had not been served, no prejudice was caused to the Petitioner because she had tendered a detailed explanation seeking reinstatement to the Provincial Director through the Zonal Director by P9, and, when this had been refused, the Petitioner appealed giving extensive reasons by P11 to the Secretary of the Subject Ministry, by P12 to the Public Service Commission, by P14 to the Governor, and by P16 to the Human Rights Commission.

For the time being I will accept this argument—R5 is the vacation of post letter and the said documents are the explanations of the Petitioner seeking reinstatement, and P10, P13 and P15 are the decisions made by the relevant authorities refusing reinstatement.

The next question relates to the reasons for the said decisions. There are no stated reasons in any of those decisions except to say that the Petitioner's request/appeal was refused (due to non-acceptance of her explanation).

Public law remedies such as writs of certiorari and mandamus are largely, if not solely, based on principles of natural justice. The first principle of natural justice is: Hear both sides before taking a decision. This is known as the *audi alteram partem* rule, which runs across-the-board in the whole spectrum of the decision-making process as a golden thread, irrespective of whether it is a regular Court, quasi-judicial body, administrative tribunal and the like. Hearing both sides does not end the matter. After the hearing, the deciding authority shall give reasons for the decision made, for otherwise nobody would know why the said decision was taken. The aggrieved party has a right to know the reasons for the decision, at least to decide whether to challenge the decision by appeal/judicial review. If the decision is challenged, the Court shall know the basis for the impugned decision to ascertain the correctness or otherwise of the decision. When the original decision is empty, what can the Court do other than declaring that there is no decision to review in the eyes of the law and therefore the purported decision is a nullity, unless, at least, the reasons for the said decision, which were originally withheld for some reason, are later submitted to Court.

Although there was a prior tendency to lean towards the view that "*[n]either the Common Law nor principles of natural justice require as a general rule that administrative tribunals or authorities should give reasons for their decisions that are subject to judicial review*"[1], the general trend in modern administrative law is an increasing acceptance of the importance of giving reasons for decisions, and a rejection of the aforesaid traditional view. Although there is no explicit general rule included in the principles of natural justice, Wade vigorously supports the view in favour of giving reasons.

> *The principles of natural justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, relevant consideration and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of*

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[1] *Yaseen Omar v. Pakistan International Airlines Corporation [1999] 2 Sri LR 375* (SC), vide also *Kusumawathie v. Aitken Spence Co. Ltd. [1996] 2 Sri LR 18*, *Sportsman Tea (Pvt) Ltd. v. Commissioner General of Labour [2006] 1 Sri LR 93* and the cases cited at 6-8 in *Hapuarachchi v. Commissioner of Elections [2009] 1 Sri LR 1*

> *justice. It is also a healthy discipline for all who exercise power over others.*[2]

To my mind, the notion that there is no principle of natural justice that a tribunal or an administrative authority should give reasons for its decision, is inherently incoherent. Natural justice unequivocally demands that administrative authorities give reasons for their decisions.[3] What is Natural Justice? "*In its broadest sense natural justice may mean simply the natural sense of what is right and wrong and even in its technical sense it is now often equated with fairness.*"[4]

If natural justice does not require giving reasons for decisions, at least, fairness does. Explaining the relationship between reasons and fair treatment, Galligan states that giving reasons for decisions is a means of determining whether power has been exercised properly and whether parties have been treated fairly: "*the underlying principle of fair treatment is that a party be treated according to authoritative standards, and the giving of reasons is a means to that end.*"[5]

According to Wade, as I have quoted above, failure to give reasons for a decision amounts to deprivation of the protection of the law.

Article 12(1) of our Constitution recognises "the equal protection of the law" as a fundamental right. This means, empty decisions

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[2] H.W.R. Wade and C.F. Forsyth, *Administrative Law*, 11th Ed. (2014), Oxford University Press, pp. 440-441

[3] *Shell Gas Lanka Ltd. v. Consumer Affairs Authority [2005] 3 Sri LR 262*, *Kegalle Plantations Ltd. v. Silva [1996] 2 Sri LR 180*

[4] Wade & Forsyth, op. cit., p.374

[5] D.J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures* (1996), Clarendon Press, Oxford, p.432

devoid of reasons not only give rise to invoking the writ jurisdiction of the Court of Appeal, but also the fundamental rights jurisdiction of the Supreme Court.

This was considered in the case of *Hapuarachchi v. Commissioner General of Elections*[6] where the Commissioner General of Elections refused to register the Petitioners' new party as a recognised political party, as he was statutorily empowered to do, but without giving reasons. The Petitioners came before the Supreme Court complaining that their fundamental right guaranteed by Article 12(1) for equal protection of the law was violated thereby.

Bandaranayake J. (later C.J.) at page 16 held:

> *The Petitioners had complained of the infringement of their fundamental right guaranteed in terms of Article 12(1) of the Constitution. Article 12(1) of the Constitution deals with the right to equality and reads as follows:*
>
> *"All persons are equal before the law and are entitled to the equal protection of the law."*
>
> *Equality, which could be introduced as a dynamic concept, forbids inequalities, arbitrariness and, unfair decisions. As pointed out by Bhagwati, J. (as he then was) in E. P. Royappa v. State of Tamil Nadu AIR (1974) SL 555*
>
> *"From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn*

[6] [2009] 1 Sri LR 1

> *enemies, one belongs to the rule of law in a Republic while the other, to the whim and caprice of an absolute monarch."*
>
> *In such circumstances to deprive a person of knowing the reasons for a decision, which affects him would not only be arbitrary, but also a violation of his right to equal protection of the law.*

Wade continues:

> *Notwithstanding that there is no general rule requiring the giving of reasons, it is increasingly clear that there are many circumstances in which an administrative authority which fails to give reasons will be found to have acted unlawfully. The House of Lord has recognised 'a perceptible trend towards an insistence on greater openness…or transparency in the making of administrative decisions' and consequently has held that where, in the context of the case, it is unfair not to give reasons, they must be given.*[7]

According to Wade "*it is always possible that the failure to give reasons for a decision may justify the inference that the decision was not taken for a good reason.*"[8]

In *R v. Secretary for Trade and Industry ex parte Lonrho Plc*[9], Lord Keith stated that "*if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the*

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[7] Op. cit., p.441
[8] Op. cit., p.442
[9] [1989] 1 WLR 525 at 540

court draws the inference that he had no rational reason for his decision."

Failure to give reasons is a denial of justice.

In *Lankem Tea and Rubber Plantations (Pvt) Ltd v. Central Bank of Sri Lanka*,[10] Sripavan J. (later C.J.) held:

> *In the absence of reasons [by the Controller of Exchange], it is impossible to determine whether or not there has been an error of law. Failure to give reasons therefore amounts to a denial of justice and is itself an error of law.*
>
> *In R v Mental Health Review Tribunal-ex parte Clatworthy (1985) 3 All ER 699 it was held that reasons should be sufficiently detailed as to make quite clear to the parties and specially the losing party as to why the tribunal decided as it did and to avoid the impression that the decision was based upon extraneous consideration rather than the matter raised at the hearing.*[11]

Failure to give reasons suggests arbitrariness.

Bandaranayake J. (later C.J.) in the Supreme Court case of *Choolanie v. People's Bank*[12] observed:

> *On a consideration of our case law in the light of the attitude taken by Courts in other countries, it is quite clear that giving reasons to an administrative decision is an important feature*

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[10] [2004] 2 Sri LR 133
[11] Vide also the Judgment of Sripavan J. in Benedict v. Monetary Board of the Central Bank of Sri Lanka [2003] 3 Sri LR 68
[12] [2008] 2 Sri LR 93 at 105-106

> *in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion.*

In the Supreme Court case of *Karunadasa v. Unique Gems Stones Ltd*,[13] the 2nd Respondent Commissioner made a formal decision upon the recommendations of the 1st Respondent Assistant Commissioner, but there were no reasons stated in the decision of the Commissioner. Mark Fernando J. on behalf of the Supreme Court stated:

> *To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd Respondent's failure to produce the 3rd Respondent's recommendation thus justified the conclusion that there were no valid reasons, and that Natural Justice had not been observed. The fact that the 3rd Respondent held a fair inquiry and otherwise acted within jurisdiction does not excuse the failure to give reasons.*

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[13] [1997] 1 Sri LR 256

The case was, accordingly, remitted to the Court of Appeal to re-hear, after calling for and examining the record and the recommendations made by the Assistant Commissioner to the Commissioner.

In *Ceylon Printers Ltd v. Commissioner of Labour*[14], the Assistant Commissioner of Labour after a prolonged inquiry decided that the termination of employment of the workmen had been for disciplinary reasons and recommended to the Commissioner that the application of the Union be dismissed. However, the Deputy Commissioner, when requested by the Commissioner to consider and report on the findings of the Assistant Commissioner who held the inquiry, had taken into account new material–namely a judgment of the Court of Appeal where it had been held that an employee can be dismissed on disciplinary grounds as a punishment only after a disciplinary inquiry–to disagree with the recommendation of the Assistant Commissioner as, according to the Deputy Commissioner, no such disciplinary inquiry had been held by the employer in this instance. This the Deputy Commissioner did without affording an opportunity to the employer to be heard. The Commissioner agreed with the Deputy Commissioner and ordered the reinstatement of the workmen with back wages. On appeal to the Supreme Court, Counsel for the Commissioner conceded that at the point of departure the employer should have been given an opportunity of challenging the new material. But Counsel contended that there was no duty on the Commissioner to have given reasons for his Order in the absence of a statutory requirement to do so.

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[14] [1998] 2 Sri LR 29

The Bench of the Supreme Court, adorned by G.P.S. De Silva C.J., Wijetunga J. and Gunasekera J., having referred to a spate of authorities including *Karunadasa v. Unique Gem Stones Ltd. (supra)*, held that the Commissioner was acting in breach of the principles of natural justice when he (a) failed to give an opportunity to the employer to challenge the new material on which he acted; and (b) failed to give reasons for his decision, particularly in view of the fact that it was not he who held the inquiry and recorded the evidence.

In *Kusumawathie v. Aitken Spence Co. Ltd.*[15] S.N. Silva J. (later C.J.) stated:

> *There is no requirement in law to give reasons should not be construed as a gateway to arbitrary decisions and orders. If a decision that is challenged is not a "speaking order", (carrying its reasons on its face), when notice is issued by a Court exercising judicial review, reasons to support it have to be disclosed with notice to the Petitioner. Rule 52 of the Supreme Court Rules 1978, is intended to afford an opportunity to the Respondents for this purpose. The reasons thus disclosed form part of the record and are in themselves subject to review.*

When shall the decision-maker give reasons? He shall give reasons at the time of making the decision unless there is an agreement to the contrary. Can failure to give reasons be remedied by giving reasons later? The answer shall be in the negative. If reasons have been given but not communicated to the

[15] [1996] 2 Sri LR 18 at 28

party concerned, the situation is different. In such a situation, once the appeal/judicial review is put in motion, the decision-maker can tender those reasons to Court, as suggested by Mark Fernando J. in *Karunadasa v. Unique Gems Stones Ltd* (*supra*), and S.N. Silva J. in *Kusumawathie v. Aitken Spence Co. Ltd* (*supra*). If reasons are suggested for the first time in Court, the tendency is to reject them as afterthoughts.

In *Wijepala v. Jayawardena*,[16] Mark Fernando J. went so far as to say:

> *Although openness in administration makes it desirable that reasons be given for decisions of this kind, in this case I do not have to decide whether the failure to do so vitiated the decision, However, when this Court is requested to review such a decision, if the Petitioner succeeds in making out a prima facie case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons—and so also, if reasons are [now] suggested, they were in fact not the reasons, which actually influenced the decision in the first place.*

Wade explains the position in this way:

> *Thus the question arises whether a failure to give reasons at or about the time of the disputed decision, may be remedied by reasons given much later in the Respondent's affidavit responding to the grant of permission. If the duty to give*

[16] SC 89/95 SCM of 30.06.1995 cited in *Hapuarachchi v. Commissioner of Elections [2009] 1 Sri LR 1* at 12

> *reasons is an element of natural justice, the failure to give reasons, like any other breach of natural justice, should render the disputed decision void. And a void decision could not be validated by late reasons even if they show that the decision was justified. Consistent with this analysis the Court of Appeal has quashed a decision that an applicant was intentionally homeless notwithstanding that the bad reasons given when the decision was made were supplemented by good reasons given in the Respondent's affidavit. 'It is not ordinarily open', the Court of Appeal said in another case, 'to a decision maker, who is required to give reasons, to respond to a challenge by giving different or better reasons.' There is always the danger that the decision-maker in giving supplementary reasons may drift 'perhaps subconsciously, into ex post facto rationalisation' of the decision. Thus decision-makers should not be given 'a second bite at the cherry'. European law requires reasons to be given with the decision.*[17]

Coming back to the facts of the instant case, it may be recalled that section 174 in P18 casts a mandatory duty on the Disciplinary Authority to give reasons. If I may repeat, it says "*The Disciplinary Authority shall record the reasons for his decision in the respective file clearly and accurately in detail.*" I emphasise "*clearly and accurately in detail*". But the Provisional Director of Education by P10, the Secretary to the Public Service Commission by P13 and the Governor by P15 gave no reasons for their decisions to turn down the request/appeal of the Petitioner. The

[17] Op. cit., p.445

reason given by learned Deputy Solicitor General relying on the old circulars is factually inaccurate. Hence there exists a strong case in favour of the Petitioner on this ground.

The Petitioner has established her claim. I grant the reliefs to the Petitioner as prayed for in paragraphs (b)-(d) of the prayer to the petition and quash the impugned decisions contained in P10, P13 and P15 by certiorari.

Learned President's Counsel for the Petitioner candidly admitted that the Petitioner is also at fault for not having ensured approval of her leave prior to going abroad.

In the Petitioner's appeal to the Governor in P14, she accepts in the concluding paragraph that she was wrong to have left the country without written approval of her leave, but requests leniency in the circumstances of this case.

Learned Senior Deputy Solicitor General drawing attention to paragraph 5 of the statement of objections of the 4th-10th Respondents says: (a) as seen from R1, the Petitioner was sent on vacation of post with effect from 01.06.1992 due to her failure to report to work, but was reinstated with effect from 24.08.1995 as seen from R2; (b) from 09.06.1997 to 01.07.1997 she failed to report for duty without obtaining leave; and (c) from 30.01.2007 to 24.01.2008 she obtained overseas leave.

This means the Petitioner's track record is not altogether impressive. Writ being a discretionary relief, the conduct of the party applying plays a pivotal role in deciding the matter. However, in the facts and circumstances of this case, the severity

of the breach by the Respondents outweighs the past reproachable conduct of the Petitioner.

The relief prayed for in paragraph (e) is also granted, subject to the condition that if there is no vacancy in the relevant school, the authorities can decide on a school where the Petitioner can resume her duties. To avoid any ambiguity, let me say that she is not entitled to a salary until she resumes duties.

Application is allowed. No costs.

Judge of the Court of Appeal