

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

In the matter of an application in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Application No. SC (FR) 137/2011.

S.D.P.W. Waidyaratne
Siri Wedamadura,
6th Mile Post,
Mawathagama.

Petitioner.

Vs.

1. Provincial Commissioner Local Government, Provincial Council of the North Western Province (NWP), Kurunegala.
2. Chairman,
Mawathagama Pradheshiya Sabha,
Mawathagama.
3. Secretary,
Mawathagama Pradheshiya Sabha,
Mawathagama.
4. Hon. Governor,
Provincial Council North Western Province,
Kurunegala.

5. Dr. Uthpalani Herath,
Provincial Commissioner of Ayurveda
North Western Province,
Kurunegala.
6. Dr. R.A. Chaminda Kumara,
Public Health Medial Officer
Mawathagama Pradheshiya Sabha,
Mawathagama.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

Before : Buwaneka Aluwihare, PC, J
P. Padman Surasena, J
E.A.G.R. Amarasekara, J.

Counsel : Rasika Dissanayake with Sandun Senadhipathi for the
Petitioner.

Rajiv Goonetillake, SSC, for the 1st, 4th & 7th Respondents.

Argued on : 18.03.2019

Decided on : 25.10.2019

E.A.G.R. Amarasekara, J.

The Petitioner by her Petition dated 20.04.2011 has complained to this court that her fundamental rights guaranteed by Article 12 and 14(1)(g) of the constitution have

been infringed by 1st – 5th Respondents. She alleges that she has been transferred from the Mawathagama Pradeshiya Sabha to the Bingiriya Pradeshiya Sabha by letter dated 29.03.2011, marked as P14, with effect from 2011.03.31. She further alleges that the said transfer as made in P14 is illegal, unreasonable, and irregular and calls upon this court to declare that it is bad in law and has no force in law. This court, by its order dated 27.07.2011 granted leave to proceed under Article 12(1) of the constitution.

The Petitioner was an Ayurvedic medical officer attached to the Mawathagama Pradeshiya Sabha until she was transferred to Bingiriya Pradeshiya Sabha with effect from 2011.03.31.

The Public Service Commission appointed the Petitioner as a primary grade medical officer, in the Ayurvedic medical service of the Department of Ayurveda, by letter marked P1 dated 31.07.2001. Thereafter, the petitioner was absorbed into the provincial public service of the North Central Province as an Ayurvedic Medical Officer and was assigned to the Dimbulagala Pradeshiya Sabha. Subsequently, on a request made by the petitioner she was transferred to Ipologama Pradeshiya Sabha in the same capacity. The Petitioner states that both Dimbulgala and Ipalogama are classified as difficult and remote areas in the North Central Province, and having served in difficult areas for more than 3 years (The Petitioner worked for 4 years and 8 months) she was entitled to a transfer to a preferred station. Accordingly, the petitioner was released from the service in the North Central Provincial Council to join the service of the North Western Province. Anyhow, no documentary proof is adduced to show that she was entitled to such preferred station as aforesaid. Nevertheless, it is not a disputed fact that she was released from service in the North Central Province to serve in the North Western Province. The Petitioner states that, thereafter, the Petitioner

was assigned to the Mawathagama Pradeshiya Sabha with effect from 2007.09.15, but the Petitioner was not permitted to assume duties by the incumbent Ayurvedic Medical Officer Mrs. Uthpalani Herath who refused to go on transfer. As a result, the Petitioner was not paid her salary for one and half months and on 2007.06.18 the Commissioner of the Department of Ayurveda retransferred the petitioner to Meethanwela Central Ayurvedic Dispensary. No document was produced to show that she was assigned to Mawathagama Pradeshiya Saba from North Central Province. Anyway, the Respondents explains that the transfer from North Central Province to North Western Province, in other words to Mawathagama or Meethanwala were not actions of the Respondents of this case and were actions by the Central Government Commissioner of Ayurvedha. In proof of this, the Respondents have tendered the document marked as R2.

However, the Petitioner had made a complaint to the Human Rights Commission and subsequent to a report and a recommendation (P4 and P 5) of the Human Rights Commission, the Petitioner assumed duties at Mawathagama Pradeshiya Sabha as an ayurvedic medical officer and Mrs. Uthpalani Herath, 5th Respondent medical officer, who was serving at the said station was transferred out of the said Pradeshiya Sabha. The said 5th Respondent has now become the Provincial Commissioner of Ayurveda, North Western Province.

However, the present application is not with regard to the aforesaid incidents that had apparently taken place several years prior to the date of the Petition, during the period between 2007 to 2009. It appears that the Petitioner's intention, in relating the above incidents, was to show that that the Respondents were acting in retaliation to what

had taken place prior to the present incident in issue, namely her transfer to Bingiriya Pradeshiya Sabha.

The Petitioner further states that while serving at Mawathagama, on 06.05.2010, the Petitioner had had a fall from the 1st floor of her house and was severely injured. After being treated in the hospital from 06.05.2010 to 12.05.2010, she was strictly advised to bed rest for 3 months since she had injured her spine. However, the Petitioner states that she was granted only 2 months sick leave although she requested for 3 months (A true copy of the diagnosis card is marked as p6). It is pertinent to note that P6 or any other document marked by the Petitioner does not indicate that she requested for 3 months sick leave or she was recommended 3 months bed rest other than the entry in P6 recommending bed rest, possibly for 5 weeks. However, this application is not based on this alleged refusal of sick leave. On the other hand, it is an incident that had taken place many months prior to filing of this application. As such any fundamental rights violation on that issue, cannot be considered now.

Afterwards, the 1st Respondent by his letter dated 2011.01.07 (P8) transferred the Petitioner to Bingiriya Pradeshiya Sabha with immediate effect. The Petitioner states that she was receiving native treatments to her injured spine even at the date of this application and has been strictly advised by the doctor not to travel for long hours, to travel by bus or to carry weight. In support of this, the Petitioner has produced a true copy of a medical certificate issued by a native doctor marked as P7. The date of the said certificate is 04.04.2011 which was issued only 14 days prior to the date of this application and many days after the aforesaid letter marked (P8) which transferred her to Bingiriya. Thus, it is clear that the Respondents were not aware of the contents of the medical certificate marked P 7 prior to the transfer of the petitioner to Bingiriya.

Hence, the Respondents have referred to this medical certificate as a self-serving document. Even the medical certificate marked and submitted as P22 with the counter affidavit of the Petitioner bears its date as 04.05.2012. No medical certificate has been attached to the appeals marked as P12a and P12b. Thus, it is clear no medical certificate was before the relevant authorities when they decided to transfer the Petitioner by P8 dated 07.01.2011 or when considering the appeals tendered by the Respondent. Other than the mere statements by the Petitioner in her appeals with regard to her ailments, there is no material to show that there was sufficient medical evidence before the authorities when they decided to transfer her to Bingiriya or confirmed the transfer after her appeal. In that backdrop, this court cannot presume that her transfer was done unreasonably without considering her health condition. On the other hand, R6 and R7 tendered with the objections indicate that her transfer was varied to Polgahawela after filing this application. Most probably this would have been done after considering the medical reports available at that time. In her counter affidavit, the Petitioner complains that even the transfer to Polgahawela is not conducive to her health condition. She has tendered medical reports taken during the pendency of this application, marked P19 and P21, with her counter affidavit. Documents made after the alleged incident or transfer referred to in the Petition cannot be considered with regard to the alleged violation as they were not available for the perusal of the authorities before they made the transfer or confirmed the transfer after the appeal. As such those documents cannot be used to conclude that the transfer was unreasonable.

The Petitioner further agitates that her transfer to Bingiriya would subject her to many difficulties due to her illness as well as her obligations towards her children and parents. On the other hand, an employer may sympathetically consider medical

grounds and other difficulties of an employee in placing the employee to a certain station or work place but such grounds cannot be taken as grounds for an employee to demand a work place of his or her choice as of a right. Recognition of such a right may disrupt the maintenance of a sustainable service by the employer since almost all the employees face difficulties and ailments during their employments. On the other hand, as pointed out by the Respondents, by accepting her letter of appointment, she had agreed to serve in any part of the Island – vide P1.

The Petitioner alleges that the reason for the aforesaid transfer was **solely** based on false allegations made against the Petitioner by the 2nd Respondent and the transfer was on disciplinary grounds as stated in the letter of transfer marked as P8 – vide paragraph 18 of the petition. However, this court observes that the letter P8 does not state that the transfer is made due to disciplinary grounds. Contradictorily, she, in paragraph 10 of her petition states that the reason for the transfer is a request from the 5th Respondent made to the 1st Respondent seeking approval to transfer the Petitioner out of Mawathagama Pradeshiya Sabha in order to accommodate the request of the 6th Respondent. In support of this she has submitted a letter marked as P9. P9 is a letter written to the Chief Secretary of the North Western Province by Provincial Commissioner Local Government. This letter informs the necessity of transferring the Petitioner from Mawathagama to Bingiriya as well as transferring the 6th Respondent from Galgamuwa to Mawathagama. It also reveals that there was a request from the 6th Respondent for a transfer and that request was forwarded to the author of the letter through the 5th Respondent. Merely because the 5th Respondent, as part of her duty, forwarded the 6th Respondent's request for a transfer to the Provincial Commissioner of Local Government of North Western Province, this court cannot presume that it was an act of retaliation for the transfer of the 5th Respondent

from Mawathagama due to the recommendation of the Human Rights commission contained in P4 and P5 . The Respondents' position is that the transfer of the Petitioner was due to the exigencies of the service and due to the vacancy resulting with that transfer, they had to consider the request made by the 6th Respondent. However, it appears that on one hand, the Petitioner takes up the position that her transfer was on disciplinary grounds solely based on false allegation made by the 2nd Respondent and on the other hand, she takes up the position that the transfer was done to accommodate a request for a transfer by the 6th Respondent. At the same time, she tries to make out that the transfer was a result of retaliation process due to her previous complaint to the Human Rights Commission. This court feels that she is trying to assume or pretend as far as many reasons for her transfer than logically placing the causes and effects that ended up with the transfer.

P10 is an approval of the transfer of the Petitioner to Bingiriya by the 4th Respondent. The Petitioner states that she had been transferred to Bingiriya even before this approval in P10 was obtained by the chief secretary of the Province. The Respondents position is that it is not necessary to get the approval of the Governor to transfer the Petitioner. The Petitioner has not placed any material that the obtaining of approval of the Governor was essential prior to the transfer. She might be hiding her conduct reported in R5 which is mentioned below in this judgment.

P11 is a letter that informs the Petitioner to hand over the duties to the 6th Respondent in view of the transfer.

The petitioner has tendered her appeals to the 1st and 4th Respondents to reconsider her transfer - vide P12A and P12 B. By P13, the Petitioner was asked to hand over her

duties to the 6th Respondent pending the decision of the aforesaid appeals. The Petitioner admits that she remained at Mawathagama and drew her salaries from January to March of 2011. By P14 dated 29.03.2011, with reference to the appeals made, the 3rd Respondent had informed the Petitioner that the 4th Respondent had no objections to the Petitioner's transfer to Bingiriya and he was asked to give effect to the transfer. Accordingly, the Petitioner was released from Mawathagama Pradeshiya Sabha with effect from 31.03.2011 by letter dated 29.03.2011. This court observes that even though P8 contemplates an immediate transfer it appears that the petitioner was allowed to remain at Mawathagama pending her appeal. If the transfer was done with an intention to cause harassment, she would not have been allowed to stay in Mawathagama pending the appeal. P8 or P9 do not directly indicate that the transfer was due to or as a result of a disciplinary cause. However, P 9 states that the intended transfers are essential. The position of the Respondents is that the exigencies of the service necessitated this transfer to be made.

However, P14 indicates that her appeal made through P12a and P12b were not successful.

It appears from the averment 27 of the Petition that the Petitioner presents this application based on the alleged violations of her fundamental rights caused by this letter marked P14. She alleges that;

- P14 is illegal, irregular, and unreasonable.
- The Petitioner is in an Island wide service and governed by the minutes of the Sri Lanka Ayurvedic Services. Accordingly, it is the Secretary to the Ministry of Indigenous Medicine who has the authority of transferring the Petitioner and not the 1st Respondent. (However, said minutes of the Sri Lanka Ayurvedic Service are not tendered for the perusal of this court.)

- The transfer made in P14 by the 1st Respondent with the approval of the 4th Respondent is bad in law as the 1st Respondent had no authority to do so in view of the regulations published by the Public service Commission in gazette extraordinary dated 2003.07.02, marked as P15.
- The transfer made in P14 cannot be justified by any reason other than the reason to accommodate the request of the 6th Respondent.
- The said transfer has been instigated by the 4th Respondent as she was not on good terms with the Petitioner after the findings of the Human Rights Commission. (She may be referring to the 5th Respondent here as the 4th Respondent is the Governor who was not a party or one affected by the findings of the Human Rights Commission.).

It is true that 5th Respondent was transferred from Mawathagama Pradeshiya Sabha after the complaint made to the Human Rights commission by the Petitioner and now, she is the Provincial Commissioner of Ayurveda. As said before, merely because she forwarded the 6th Respondent's request for a transfer to the 1st Respondent as reflected in paragraph 2 of P9, this court cannot come to a conclusion that the 5th Respondent instigated this impugned transfer. It appears, that forwarding of the 6th Respondent's request had been done as part of functions in the discharge of duties. No sufficient material is placed before this court to prove a contrary position. Though the Petitioner argues that her transfer cannot be justified by any reason other than the reason to accommodate the request of the 6th Respondent, the Respondents' version is that 6th Respondent's transfer was considered to fill the vacancy that would be created with the transfer of the Petitioner which was done on exigencies of the service. In support of this they have placed R5 to indicate the unpleasant situations and unhealthy relationship between officers, created by the conduct of the Petitioner.

There is no sufficient material to give more weight to the stance of the Petitioner in this regard.

The Petitioner alleges that P14 is ultra vires, illegal, irregular and unreasonable and she based her action on P14. A careful perusal of P14 shows that;

- it is only a communication, written after her appeal, by the Secretary of Mawathagama Pradeshiya Sabha to the Petitioner informing that the Secretary to the Governor, the 4th Respondent had conveyed that there is no objection to the implementation of the transfer order.
- He had been asked to implement the transfer order as per the letter written by the 1st Respondent dated 25.03.2011.
- This communication relates to the transfer letter by the 1st Respondent dated 07.01.2011.

Thus, it is clear P14 is a letter written to inform the outcome of the Petitioner's appeal to the Governor, which confirms the transfer. After making an appeal to the Governor, the 4th Respondent, the Petitioner cannot be allowed to state that the communication of the outcome of it is illegal, irregular or unreasonable. If she wants to challenge the transfer on ultra vires, illegality or irregularity, she must challenge the transfer letter. The Petitioner has submitted the transfer letter as P 8. There is no averment in the petition stating that P8 is illegal or irregular or ultra vires. Accordingly, there is no prayer in the petition to declare that P8 is such a document. On the other hand, if it is the illegality, irregularity or lack of authority of the author of P8, that caused the infringement of Fundamental Rights as alleged, such infringement would have taken place on the receipt of the P8. After receiving P 8, the Petitioner had tendered appeals to other authorities on other grounds. P11, P12a, P12B, show that the Petitioner was

aware about P8 by 13.01.2011. However, the instant Petition was filed only on the 20th April 2011. In that sense this application is time barred. Even if it is considered that the action is not time barred as she was allowed to remain in Mawathagama Pradeshiya Sabha till the issuance of P14, there is no challenge in the petition to P8.

However, the contention of the Petitioner is that she belongs to an Island wide service and governed by the minutes of Sri Lanka Ayurvedic Service and the transfer made by the 1st Respondent in P 14 with the Approval of the 4th Respondent is bad in Law. In this regard the Petitioner marks the regulations published by the Public Service Commission in gazette extraordinary dated 02.07.2003 as P15. According to the said regulation the Public Service Commission has delegated its powers to transfer Ayurvedic Doctors to the Secretary to the Ministry of Indigenous Medicine. Anyhow, it is not clear whether the same authority (the Public Service Commission) has the power to transfer when an Ayurvedic Doctor is absorbed into the Provincial service. In this regard the Petitioner has marked P17 and P18 with her counter affidavit. P17 is an unsigned complaint, supposedly written by the President of All Ceylon Government Ayurvedic Medical officers' Union to the relevant Minister complaining that there was an attempt by the 5th Respondent to follow the transfer procedure in breach and this complaint is dated 07.02.2011; a date close to the impugned transfer. However, this court cannot give any weight to this document as it is an unsigned document. On the other hand, though it refers to a transfer procedure, the Petitioner has not tendered a copy of that transfer procedure or service minutes referred to in paragraph 27 to ascertain whether the allegations made above are justifiable. Furthermore, P18 is a letter issued by the Secretary to the Ministry of Indigenous Medicine quoting an advice of the Attorney General. According to that letter, the Attorney General had opined that as per and for the purposes of Article 12(1) of the Constitution of the Sri Lanka

Ayurvedic Service, all matters connected with Ayurvedic Doctors including their transfers within the provinces have to be done by the Public Service Commission. This court however, is not bound to follow this opinion. Yet the petitioner has not submitted the copy of the said Constitution or its Article 12(1) for the perusal of this Court. Thus, the Petitioner has failed to tender the necessary documents to prove her contention, that the transfer is illegal, irregular or ultra vires. In addition, this court observes that when the Petitioner was serving in the North Central province, her transfers within that province were done by the Provincial Commissioner of Local Government of that Province- Vide P3. This indicates that transfers within the provinces are done by the Provincial Commissioner of Local Government. The Respondents have submitted the document marked R1 to show that Commissioner of Ayurveda has delegated powers to Commissioners of Local Government and the Provincial Commissioners of Ayurveda to transfer ayurvedic doctors within their respective provinces, while requesting that, transfers to the other provinces from their respective provinces be referred to him. This seems to be the procedure followed by the Ayurvedic Service as evidenced by R2 (The Petitioner had been transferred from North Central Province to North Western Province by the Commissioner of Ayurveda) and R6, P8, P3 (The transfers within the relevant Provinces had been done by the relevant Provincial Commissioner of Local Government). On the other hand, if P8 was issued without authority, it is a matter that falls within the remedies under Public Law. To fall within the Article 12(1) of the Constitution, there should be material to show that there was unequal treatment with regard to transfers effected, to the Petitioner vis-a-vis other Ayurvedic medical officers. There is no material to show that transfer of others within the province was done by the Secretary to the Ministry of Indigenous Medicine or some other authority other than the author of P8, namely the 1st Respondent. As shown before, some documents marked by the Petitioner herself in

relation to her transfers within north central province indicate that transfers within a province was done by the relevant Commissioner of Local Government.

However, this court observes that the approval of the 4th Respondent was given to the transfer by P10 dated 11.01.2011. P14 conveys again that the 4th Respondent has had no objection for the transfer, even after the appeal was made. The Respondents' position is that the 4th Respondent's approval is not necessary to effectuate a transfer. Their position is that the Ayurvedic Commissioner has given authority to Commissioners of Local Government, including 1st Respondent to transfer Ayurvedic doctors within their respective provinces. This seems to be the practice even in other provinces as per the Petitioner's own documents.

She further alleges that another reason for the transfer was a false complaint made by the 2nd Respondent by his letter dated 01.11.2010 marked as P16 which she believes to have been made on the advice of 5th Respondent. There is no material to establish that it was so. P16 was written to the 1st Respondent by the 2nd Respondent, a couple of days after a prize giving ceremony, referring to the petitioner's unbecoming conduct over a prize given on the occasion of the prize giving as well as after the ceremony. While denying the allegations in P16, the Petitioner states that;

- the cheque referred to therein was never destroyed by her but handed over to the 3rd Respondent which has now been deposited to the account of the Pradeshiya sabha.
- The certificate referred to therein is framed and displayed at the Dispensary, and it has not been destroyed as alleged.
- It is a false statement to say that she carried a bag of urine to be thrown at the public health officer as alleged therein.

Nevertheless, there had been an investigation into this incident and the relevant report is marked as R5. Investigating officer has revealed that the Petitioner had acted in a manner to give the impression that she was burning the cheques and the certificate causing the Pradeshiya Sabha officers to believe that she burnt them. He also had reported that she had refused to accept the letter sent by the Secretary requesting to hand over the cheque and the certificate. The remaining of the burnt certificate in the custody of the Secretary to the Pradeshiya Sabha evidenced that the petitioner burnt photocopies of the certificate and the cheque, says the investigating officer in his report marked R5. The investigating officer had come to the conclusion that, even though it is not apparent that the Petitioner had engaged in a misconduct, he observed that she had acted in a manner causing disrepute and inconvenience to the Pradeshiya Sabha and its officers. The investigating officer had commented that to maintain the administration of Pradeshiya Sabha in regular manner, it is appropriate to transfer the Petitioner to a different station since, from the date she came, she had had conflicts with the Chairman, Secretary and the Officers of the Pradeshiya Sabha. To run a work place or a service smoothly and efficiently there must exist a good relationship among the officers involved. If they are at loggerheads or not in good terms it affects the service tendered by the relevant institution. In such a backdrop, one may have to be transferred to maintain the service and such a situation falls within the scope of the term, "exigencies of service". The position of the Respondents is that the Petitioner created a restive situation and an unpleasant atmosphere. It appears that the letter marked P16 alleging her misconduct would have been written under the misapprehension that she burnt the original certificate and cheque but the investigation report indicates that there had been a quite a drama staged by the Petitioner that created an unpleasant situation and nurtured unhealthy relationship.

This gives a weight to the version of the Respondents that the transfer was done on exigencies of the service.

The Petitioner complains that there was no disciplinary inquiry against her, but the position of the Respondent is that the transfer was not on disciplinary grounds but on exigencies of the service. When there are grounds to satisfy that there was a situation that demanded her transfer was necessary for the proper administration of the service and the workplace, a need of a disciplinary inquiry does not arise.

Additionally, the Petitioner states that the 1st to 4th Respondents failed to adhere to the procedure laid down to effect annual transfers of Ayurvedic Medical Officers but she has not tendered the approved procedure in that regard for the perusal of this court and on the other hand the transfer concerned appears to be done not as an annual transfer but on the exigencies of the service.

When the restive situation arisen of which she is also a part caused the situation to transfer her on exigencies of the service, she cannot ask her to be given the same place to work. If Bingiriya Pradeshiya Sabha is not suitable she must show what are the other reasonable places that she could be stationed. It appears that she had been given Polgahawela subsequently. But she complains that it also does not suit her health conditions as she has to travel 20 miles. As said before, medical condition of an employee can be considered by an employer when implementing a transfer but it cannot be taken as a ground to give a working place of his or her choice as it may cause disruption to the relevant service. If the distance to work place from the residence affects the health condition, the alternative is to find a place close to the working place.

The Petitioner has marked another appeal she tendered during the pendency of this application with regard to the transfer made to Polgahawela and requesting that she would be given Mawathagama Pradeshiya Sabha and the refusal of that appeal as P20 and P21. Whether an infringement was occurred when she was transferred to Bingiriya Pradeshiya sabha has to be decided according to the facts and material available and was in existence at that time. These two documents and related facts that came into existence pending the result of this application cannot be considered in deciding the said alleged infringement. However, P21 also confirms that transfer to Polgahawela was considered due to the health condition of the Petitioner. It also states that she was transferred from Mawathagama due to the restive situation created by her. Hence, she could not be placed in Mawathagama Pradeshiya Sabha. As said before, when it appears that the Petitioner's conduct caused the transfer her from Mawathagama on exigencies of service, it is unreasonable for her to ask the same station through an appeal. She has not placed material to show that there are other better places that suits her health condition. As such this court cannot come to a conclusion that Respondents were unreasonable in varying the transfer order to Bingiriya and giving her Polgahawela.

In the appointment letter she had undertaken to work anywhere in the Island. When she was transferred within the province on exigencies of service this court cannot consider that it deprives her right of freedom to engage by herself or in association with others in any lawful occupation, profession, trade, business or enterprise in violation of Article 14(1)(g) of the Constitution.

This court observes that there are many documents tendered to the brief by the petitioner herself through letters without notice to the opposite parties. When there

is a registered attorney, she must tender her documents through him and through her pleadings so that the opposite party could meet them and reply. Thus, this court discourages such practice and does not entertain or treat them as part of the case record to come to a decision in this regard. This court considers only the documents tendered with the pleadings of the parties or with the sanction of the court.

The matters discussed above show that;

- There are no sufficient grounds to hold that the Petitioner was transferred to Bingiriya on disciplinary grounds, without holding a disciplinary inquiry as alleged by the Petitioner.
- It appears more probable that she was transferred on exigencies of service.
- The Petitioner has not placed sufficient materials to show that the decision to transfer her was illegal, ultra vires or unreasonable. She has not submitted the relevant materials referred to in this regard in her pleadings and supporting documents. For Example; Minutes of the Sri Lanka Ayurvedic Service referred to in paragraph 27 a of her petition, Constitution of Sri Lanka Ayurvedic Service referred to in P18.

As per the petition, the Petitioner has based her application on alleged infringements of her fundamental rights caused by the letter P14. As said before, By P14, the Secretary to the Mawathagama Pradeshiya Sabha, the 3rd Respondent conveys the outcome of her appeal to the 4th Respondent and that he has been directed to effectuate the transfer order. Thus, it is not the original transfer letter or Order. As Petitioner herself has appealed to the 4th Respondent, communication of the result of it through P14 cannot be considered as illegal, unreasonable or ultra vires. She has not prayed any relief to declare P8, which seems to be the transfer letter, as illegal, ultra

vires or unreasonable. On the other hand, it appears that she was transferred on exigencies of the service. Hence, this court decline to hold that the fundamental rights of the Petitioner were infringed by the Respondents and dismiss the application of the Petitioner without costs.

Judge of the Supreme Court

Justice Buwaneka Aluwihare, PC,

I agree.

Judge of the Supreme Court

Justice P. Padman Surasena,

I agree.

Judge of the Supreme Court