

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

In the matter of an application under and in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC (FR) No. 346/2017

1. **Kekulandara Mudiyanse le Huri**
Arawe Gedara Sudath,
19/1, Watagoda Temple Road,
Aruppala,
Kandy

2. **Kekulandara Mudiyanse le Huri**
Arawe Gedara Kusal Annuththara
Kekulandara,
19/1, Watagoda Temple Road,
Aruppala,
Kandy

3. **Kekulandara Mudiyanse le Huri**
Arawe Gedara Maithree Annuththara
Kekulandara
19/1, Watagoda Temple Road,
Aruppala,
Kandy

PETITIONERS

Vs.

1. **E.P.T.K. Ekanayake,**
Director of Education,
Department of Education,
Central Province,
Kandy

2. **S.A.K. Kulatunga,**
Assistant Director of Education,
Department of Education,

Central Province,
Kandy

- 3. M.W. Wijeratne,**
Zonal Director,
Zonal Education Office,
Kandy
- 4. R. Rajapakse,**
Principal,
Kandy Maha Vidyartha Viduhala,
Kandy
- 4A. M.R.P. Mayadunne,**
Principal,
Kandy Maha Vidyartha Viduhala,
Kandy
- 5. P.B. Wijyaratne,**
Secretary,
Chief Ministry,
Central Province,
Kandy
- 5A. R.M.P.S. Ratnayake,**
Secretary,
Chief Ministry,
Central Province,
Kandy
- 6. Hon. Sarath Ekanayaka,**
Central Province Chief Minister,
Central Province Chief Ministry,
Digana Road,
Kundasale
- 7. Hon. Akila Viraj Kariyawasam,**
Minister,
Ministry of Education,
Isurupaya,
Battaramulla
- 8. The Attorney General,**
Attorney General's Department,

Colombo 12.

RESPONDENTS

Before: Priyantha Jayawardena PC, J
Murdu N. B. Fernando PC, J.
Yasantha Kodagoda PC, J.

Counsel: Ermiza Tegal with Thiagi Piyadasa for the petitioners,
Viveka Siriwardena, DSG for the 1^s to 3rd, 4A, 5A and 8th respondents

Argued on: 03rd of June, 2020

Decided on: 05th of April, 2022

Priyantha Jayawardena PC, J

Facts of the Application

The 1st petitioner, who is the father of the 2nd and 3rd petitioners, filed the instant application on behalf of the 2nd and 3rd petitioners, who were students in Grade 7 and Grade 3 of Vidyarthartha College, Kandy, respectively.

The petitioners alleged that the inaction on the part of the 4th respondent to take appropriate action against the alleged harassment caused to the 2nd and 3rd petitioners, and the failure of the 1st, 2nd, 3rd and/or 5th respondents to take appropriate and timely remedial action against the purported inaction of the 4th respondent, resulted in the violation of the Fundamental Rights of the 2nd and 3rd petitioners enshrined in Article 12 (1) of the Constitution.

The 1st petitioner stated that in January 2016, he objected to the appointment of an individual to the post of treasurer of the Parents' Committee of Vidyarthartha College made by the 2nd petitioner's class teacher (hereinafter sometimes referred to as the "said class teacher") as he was aware of previous corrupt practices of the proposed treasurer.

The 1st petitioner stated that, approximately two weeks after the said incident, the 2nd petitioner had been beaten by the said class teacher. The 1st petitioner further stated that despite the

complaints made by him regarding the said incident to the 4th respondent, who was the then principal of Vidyarthi College, no action had been taken by him against the said class teacher.

Further, the 1st petitioner stated that on the 16th of February, 2016, the said class teacher had threatened to kill the 2nd petitioner after accusing him of beating another student. Thus, the 1st petitioner had once again complained to the 4th respondent about the said incident, and had lodged a complaint at the Kandy Police station regarding the harassment caused to the 2nd petitioner by the said class teacher.

The 1st petitioner stated that subsequently, the teachers in Vidyarthi College had begun to ill-treat the 3rd petitioner, his younger son.

Thereafter, the 1st petitioner had made complaints to the 1st, 3rd and 6th respondents regarding the harassment caused to the 2nd petitioner by the said class teacher and the inaction of the 4th respondent to take steps in respect of the said complaints against her.

Moreover, the 1st petitioner had lodged a complaint with the Human Rights Commission regarding the alleged inaction of the 4th respondent to take action against the said harassment caused to the 2nd and 3rd petitioners.

The 1st petitioner further stated that during the parents-teachers meeting held on the 30th of March, 2017, the 4th respondent had requested other parents of students at the said school to defend the said class teacher against false allegations made by the 2nd petitioner.

Moreover, the 1st petitioner stated that the Assistant Principal and two other teachers of the said school had assaulted the 2nd petitioner, while several other parents had assaulted his wife on the 5th of April, 2017. The 1st petitioner stated that the 2nd petitioner and his mother were hospitalised as a result of the said incident.

Consequently, the 1st petitioner had once again lodged a complaint at the Kandy Police station and the Human Rights Commission stating that the 2nd and 3rd petitioners had refused to attend school due to the aforementioned assault.

The 1st petitioner further stated that a consultant psychiatrist had recommended that the 2nd and 3rd petitioners should be transferred to a different school as they were experiencing trauma from being ill-treated at Vidyarthi College.

The 1st petitioner stated that he was informed by the Education Department of the Central Province on the 5th of July, 2017, that steps were being taken to issue a charge sheet against the said class teacher.

Moreover, the Human Rights Commission, after holding an inquiry in respect of the complaint made by the 1st petitioner, had, by letter dated 13th of July, 2017, requested the 1st respondent to provide a suitable alternative school for the 2nd and 3rd petitioners situated in close proximity to the petitioners' residence. Accordingly, the 1st, 3rd and 5th respondents had informed Wariyapola Sri Sumangala College to admit the 2nd and 3rd petitioners.

Thereafter, the 1st petitioner had informed the Human Rights Commission and had sent letters to the 1st and 3rd respondents stating that the suggested alternative school was of a lower academic standard than Vidyarthi College and was situated further away from the petitioners' residence than other suitable schools in the area, such as St. Sylvester's College. Thus, the 1st petitioner had contended that the 2nd and 3rd petitioners should be given admission to a better school such as St. Sylvester's College.

In the circumstances, it was stated that the inaction of the 4th respondent to take appropriate action in respect of the alleged harassment caused to the 2nd and 3rd petitioners, and the failure of the 1st, 2nd, 3rd and/or 5th respondents to take appropriate action against the purported inaction of the 4th respondent, resulted in the 2nd and 3rd petitioners being unable to attend Vidyarthi College, thereby violating the Fundamental Rights of the 2nd and 3rd petitioners guaranteed by Article 12 (1) of the Constitution.

After the application was supported, the court had granted leave to proceed for the alleged violation of Article 12 (1) of the Constitution.

Objections of the 1st respondent

The 1st respondent filed objections and stated that in January 2016, the said class teacher had caned the 2nd petitioner to discipline him as he had harassed new students who had joined Grade 6 of Vidyarthi College pursuant to the scholarship examination.

The 1st respondent further stated that in response to the complaint made by the 1st petitioner against the alleged harassment caused to the 2nd petitioner by the said class teacher in January 2016, the 4th respondent had promptly directed the said class teacher to stop using corporal punishment to discipline the 2nd petitioner.

Further, in February 2016, in response to the 1st petitioner's second complaint alleging that the said class teacher threatened to kill the 2nd petitioner, the 4th respondent had taken steps to remove her from the said post of 'class teacher'. Further, she had been removed from teaching the subject of 'practical technical skills' in the 2nd petitioner's class and a different class had been assigned to her.

The 1st respondent stated that he had received a letter on the 1st of June, 2016 from the 1st petitioner alleging the harassment caused to the 2nd petitioner by the said class teacher. Consequently, the 1st respondent had appointed a committee on the 9th of June, 2016 to conduct a preliminary inquiry into the alleged harassment of the 2nd petitioner.

Further, the 1st respondent denied the 1st petitioner's allegation that the 4th respondent had requested other parents of the students to defend the said class teacher during a parents-teachers meeting held on the 30th of March, 2017. Moreover, it was also denied that the Assistant Principal and two other teachers of Vidyarthi College had assaulted the 2nd petitioner and that some parents of students had assaulted the 2nd petitioner's mother on the 5th of April, 2017. He further denied that the teachers in the said school had ill-treated the 3rd petitioner.

It was further stated that, consequent to a complaint made by the 1st petitioner, the Human Rights Commission had requested the 1st respondent to provide a suitable school for the 2nd and 3rd petitioners in close proximity to the petitioners' residence by letter dated 13th of July, 2017.

Accordingly, the 1st, 3rd and 5th respondents had taken a decision to admit the 2nd and 3rd petitioners to Wariyapola Sri Sumangala College in August, 2017 and had informed the principal of the said college accordingly.

The 1st respondent denied the 1st petitioner's claim that the 2nd and 3rd petitioners had not been provided with a suitable alternative school and stated that Vidyarthi College and Wariyapola Sri Sumangala College are of a similar academic standard as both schools fall under '1AB category' and that the distance between the two aforementioned schools is approximately 100 meters.

Moreover, it was stated that even though the 1st petitioner requested for the 2nd and 3rd petitioners to be admitted to St. Sylvester's College, the 2nd petitioner had only obtained 169 marks at the scholarship examination, which was lower than the cut-off mark of 174 required to gain admission to St. Sylvester's College.

Further, the 1st respondent stated that the said class teacher was transferred to St. Sylvester's College and was serving in the said school at the time the 1st petitioner made the request to transfer the 2nd and 3rd petitioners to the said school. Therefore, it is evident that their motive in filing the instant application was to gain admission to St. Sylvester's College.

Moreover, the 1st respondent stated that at the time of filing his objections, a charge sheet dated 31st of December, 2017 was issued against the said class teacher for the harassment of the 2nd petitioner.

The 1st respondent further stated that a student who fails to attend a school for 40 consecutive days without notice is considered as having left the school in terms of the circulars issued by the Ministry of Education. However, despite the failure of the 2nd and 3rd petitioners to attend school without any notice since the 5th of April, 2017, their names had not been removed from the school register. Hence, it is apparent that the said school had acted in the best interests of the 2nd and 3rd petitioners.

It was further stated that, taking into consideration the abovementioned facts, the respondents had taken appropriate remedial action regarding the complaints made against the alleged harassment faced by the 2nd and 3rd petitioners, and as such, they had not violated the Fundamental Rights of the 2nd and 3rd petitioners guaranteed under Article 12 (1) of the Constitution.

Subsequently, by way of a motion, the respondents produced the preliminary inquiry report, the charge sheet, the disciplinary inquiry report and the disciplinary order made against the said class teacher for the alleged harassment of the 2nd petitioner, marked as 'X1', 'X2', 'X3' and 'X4', respectively.

At the time of the hearing of the instant application, the learned counsel for the petitioner informed court that the petitioners would only pursue the reliefs prayed for in paragraphs (e) and (h) of the petition which states as follows;

“(e) Declare that the refusal and/or failure of the 1st, 2nd, 3rd and/or 5th respondents to take appropriate and timely remedial action against the 4th respondent constitutes an infringement and/ or a continuing infringement of the Petitioners' Fundamental Right to equality before the law and equal protection of the law protected by Article 12 (1) of the Constitution.

(h) Declare that the refusal and/or failure of the 4th respondent to address the complaints made on behalf of the 2nd and 3rd petitioner which subsequently caused them to refrain from attending Vidyarthi College constitutes an infringement and/or a continuing infringement of the Petitioners' Fundamental Right to equality before the law and equal protection of the law protected by Article 12 (1) of the Constitution.”

Have the 2nd and 3rd petitioners' Fundamental Rights enshrined in Article 12 (1) of the Constitution been infringed?

In view of the abovementioned prayers to the petition, it needs to be considered whether there was an inaction on the part of the 4th respondent to take action in respect of the complaints of harassment under reference, and whether there was a failure on the part of the 1st, 2nd, 3rd and/or 5th respondents to take appropriate and timely remedial action against the purported inaction of the 4th respondent.

The 1st petitioner stated that after he objected to the appointment of an individual to the post of treasurer of the Parents' Committee of Vidyarthi College by the said class teacher, she had assaulted the 2nd petitioner, in January 2016. Thereafter, on the 16th of February, 2016, the petitioner stated that the said class teacher had threatened to kill the 2nd petitioner for allegedly beating another student.

The 1st petitioner stated that despite the complaints made by him regarding the aforementioned incidents, no action was taken by the 4th respondent against the said class teacher.

The material furnished to this court shows that after the first complaint of the 1st petitioner alleging that the said class teacher had caned the 2nd petitioner, the 4th respondent had directed her to refrain from using corporal punishment to discipline the 2nd petitioner.

Further, after the second complaint where it was alleged that the said class teacher had threatened to kill the 2nd petitioner, the 4th respondent had removed her from the post of 'class teacher' and from teaching the subject of 'practical training skills' in the 2nd petitioner's class.

Moreover, upon receiving a letter from the 1st petitioner on the 1st of June, 2016, the 1st respondent had appointed a committee on the 9th of June, 2016 to conduct a preliminary inquiry into the alleged harassment caused to the 2nd petitioner by the said class teacher. The 4th

respondent has facilitated the holding of the said preliminary inquiry against the said class teacher.

Pursuant to the findings of the preliminary inquiry, the 1st petitioner had been informed, by letter dated 5th of July, 2017, that steps were being taken to issue a charge sheet against the said class teacher by the Education Department of the Central Province.

Subsequently, a charge sheet dated 31st of December, 2017 had been issued by the 1st respondent against the said class teacher in respect of the alleged harassments caused to the 2nd petitioner.

Consequently, an inquiring officer had been appointed to conduct the disciplinary inquiry against the said class teacher on the 28th of April, 2018, and the said disciplinary inquiry had been conducted from the 05th of July, 2018 to 06th of September, 2018.

Thereafter, the disciplinary inquiry report dated 2nd of October, 2018 had been submitted by the inquiring officer. The said report stated that the said class teacher was found guilty of all charges by the inquiring officer.

Consequently, by a disciplinary order dated 21st of November, 2018, her salary increments were deferred for two years. Further, the said class teacher, who was then serving in St. Sylvester's College, Kandy, was given a punishment transfer to CP/W/Kengalla Maha Vidyalaya, by letter dated 11th of December, 2018.

Moreover, even though the 1st petitioner stated that the 4th respondent had requested other parents of the students to defend the said class teacher against false allegations made by the 2nd petitioner, no material was produced in court to substantiate the said allegation.

Further, although the 1st petitioner stated that a police complaint was lodged when certain teachers and parents of Vidyarthi College allegedly assaulted his wife and the 2nd petitioner on the 5th of April, 2017, a copy of the said police complaint was not produced in this court.

Conclusion

In view of the above, I am of the opinion that appropriate and timely remedial action had been taken against the said class teacher by the disciplinary authority in terms of the procedure stipulated in the Establishments Code.

Hence, I am of the view that there is no inaction on the part of the 4th respondent to take action in respect of the complaints of harassment under reference. In view of the aforementioned findings, the question of whether there was a failure on the part of the 1st, 2nd, 3rd and/or 5th respondents to take timely and appropriate remedial action against the purported inaction of the 4th respondent does not need further consideration by this court.

Thus, I hold that the respondents have not violated the Fundamental Rights of the 2nd and 3rd petitioners enshrined in Article 12 (1) of the Constitution.

In the foregoing circumstances, the petition is dismissed with no costs.

Judge of the Supreme Court

Murdu N. B. Fernando PC, J

I agree

Judge of the Supreme Court

Yasantha Kodagoda PC, J

I agree

Judge of the Supreme Court