

Exceeding Proper Authority

Case No. 363/2005

Ponniah Balachandra (Petitioner) v. K. Thilagaratnam, Zonal Director of Education, Zonal Education Office, Trincomalee; and 13 others (Respondents)

Mr. Balachandra was transferred to the National school of St. Joseph's College in Trincomalee on November 3, 1995 after 17 years of continuous employment as a Mathematics teacher in the Jaffna District since June 1, 1978. A few years later the Provincial Director of Education issued an order on October 1, 1998 directing Mr. Balachandra to be transferred to a Provincial school in the Trincomalee district. Upon appeal sought by Mr. Balachandra, on November 5, 1998 the Public Service Commission (PSC) declared the transfer to be in excess of the Provincial Director's proper authority and therefore void. The PSC noted that Provincial and National school teachers come under two different regulating authorities and National school transfers must have prior approval by a duly constituted Teacher Transfer Board. Mr. Balachandra was reinstated to St. Joseph's College and continued to teach until on May 4, 2000 when the Zonal Director of Education issued another order for Mr. Balachandra's immediate transfer to a Provincial school without consultation or approval from any Teacher Transfer Board.

Without delay, Mr. Balachandra again sought the review of PSC on May 19, 2000, but PSC took no action on the matter. Mr. Balachandra subsequently filed a complaint with Sri Lanka's Human Rights Commission (HRC) on May 23, 2000. On June 15, 2001 PSC's legal representative conceded to Mr. Balachandra's complaint before the HRC. Pursuant to this concession, the PSC directed that Mr. Balachandra be reinstated to St. Joseph's College and that his absence, following the invalid transfer order, should be treated as special leaving with pay. The PSC conveyed this decision to both the provincial offices and the Ministry of Education, National Education Program, through a letter dated October 15, 2001. Just prior to this letter, the Zonal Director of Education served a notice of vacancy dated September 5, 2001 on Mr. Balachandra. The notice of vacancy declared that Mr. Balachandra had abandoned his teaching position by failing to report for his transfer to the Provincial school since May 9, 2000 and yet even following the PSC letter dictating Mr. Balachandra's reinstatement the Zonal Director failed to withdraw the notice as requested. Mr. Balachandra reasserted his complaint before the HRC and, in line with the prior concession by the PSC, on April, 26, 2004 the HRC recommended withdrawing the notice of vacancy, reinstating Mr. Balachandra to his teaching position at St. Joseph's College, and treating his intervening absence as special leave with pay.

When the PSC did not respond or initiate corrective action, and having struggle without his salary since July 2000, Mr. Balachandra approached the Home for Human Rights (HHR) for help and the Legal Desk filed on his behalf a civil claim with the Court of Appeals on March 4, 2005. The claim asserted the transfer order and notice of vacancy were in excess of power for the Zonal Director of Education and contrary to established National Education Policy. The claim further asserted the failure to act on Mr. Balachandra's reinstatement was "arbitrary and unfair." The claim sought a writ of certiorari to quash the notice of vacancy and a writ of mandamus compelling

reinstatement with back-wages, along with seeking an interim order for reinstatement and payment of salary pending final judgment.

The Court of Appeal granted a preliminary order for Mr. Balachandra's immediate reinstatement with pay on March 15, 2005, and renewed the preliminary order at each following court appearance. In its final judgment dated December 13, 2007, the Court narrowly held simply that the law established the PSC as the relevant authority for determining the transfers of teachers at a National school. Therefore the Court enforced the PSC's own decision in Mr. Balachandra's favor by quashing the notice of vacancy and ordering his reinstatement to St. Joseph's College with the prior proscribed provision of special leave.