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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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Your No. }

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திகதி }
Date } 18-02-2021

M.B.M. Siraj
No: 138B, Old Post Office Road
Sainthamaruthu – 09. **Petitioner**

Director General
Department of Technical Education and Training
Colombo 10. **Respondent**

HRCSL Application Case No : HRC/KL/136 & HRC/KL/1126/19

This Complaint had been reported by the above petitioner Mr. M.B.M. Siraj at this office on 14th August 2018.

1. The applicant was recruited as an Instructor in Computer Technology in the Sri Lanka Technical Education Service on 15th August 2012.
2. While he was serving in Technical College, Sammanthurai he had been transferred to the Akkaraipattu Technical College on 11th June 2014, by Letter No: DTET/04/12/03/Atte/Non.Anu.1/2014 based on disciplinary grounds. Afterwards then this transfer has been cancelled and he has been retransferred to the Sammanthurai Technical College, on 18th September 2014 based on his appeal dated 22nd June 2014 and recommendation contained in the investigation report. On 25th July 2018, he has been unexpectedly transferred to the Trincomalee Technical College without any legal justification.
3. A preliminary investigation has been conducted against him on 26th and 27th March 2018, but so far a charge sheet has not been issued to him. The petitioner has accordingly been deprived of salary increments, promotions and attendant benefits.

Observations

The Director General of Department of Technical Education and Training by letter dated states that the reason for the transfer was based on the preliminary investigation conducted

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දුරකථන } தொலைபேசி } Telephone }	94 -11- 2505580 / 81 / 82	ලේකම් } செயலாளர் } Secretary }	011-2505521	ශ්‍රී ලංකා } தூரித அழைப்பு } Hotline }	1996	වෙබ් } இணையம் } Web }	www.hrcsl.lk

against the applicant. However formal investigation ought to follow the preliminary investigation and pending its conclusion, the petitioner can be subjected to a temporary transfer. However, the applicant has been permanently transferred to the Technical College in Trincomalee without a formal investigation. The permanent transfer issued to the applicant is an act which exhibits that the department has found the applicant as an offender.

- (a) In the report submitted by the Director General, Department of Technical Education and Training to the Regional Office on 29th September, 2018, she states that a transfer was issued to him on the Annual Transfer in 2014, and the said transfer was cancelled on his appeal. However, the applicant was not subject to the Annual Transfer in 2014.
- (b) She also states that a Preliminary Investigation was conducted on the basis of the complaint made by the students, and the said transfer was issued on that basis.
- (c) She also states that the draft charge sheet against the applicant based on the preliminary investigation was sent to the Secretary of the Public Service Commission who is the Appointing Authority by her letter No: DTET/04/12/DIS/16/2017 dated 06.08.2018, and once it is approved by the Public Service Commission, it will be issued to the applicant. However, the respondent Director General has not submitted any document as yet to the Regional Office in order to prove her statement in the report.
- (d) The applicant has not accepted the said report. On the request of the applicant to conduct the investigation regarding his application to the Human Rights Commission of Sri Lanka, summons was sent to the Director General of Department of Technical Education on 07th December, 2018 to present for the investigation. As the Director General stated that she was unable to be present in the investigation, and requested for a fresh date, summons was again sent to the Director General to present for the investigation on 21.12.2018. Thereafter, the Director General requested the Human Rights Commission of Sri Lanka to conduct the investigation in the Head Office of the Human Rights Commission of Sri Lanka. However, the Head Office of the Human Rights Commission did not accept her request.

At the inquiry held on 21.01.2019, Ms. H.G. Chandralatha, Registrar of Hardy College, appealing on behalf of the Respondent agreed to the following;

- (a) Since only the preliminary investigation has been completed by the Department against the petitioner and he has been transferred out of the district. He will be transferred to a suitable and nearby Technical College.
- (b) Confirm the petitioner in his position.
- (c) Issuing the annual increments for the years of 2015, 2016, and 2017.

- (d) Recommending him for the duty free Vehicle import permit for the public servants.

A report regarding the implementation of the above matters was sought from the department within three weeks. Accordingly, a report was submitted by the Director General on 12.03.2019. However, the report does not address the steps taken by the respondent to give effect to the above agreement. The Regional Office therefore requested a further report from the Respondent on the matter. Later, the Director General submitted a report to the Regional Office. The following matters had been indicated in the report.

- (a) The applicant would be transferred in the Annual Transfer.
- (b) The Annual increment could be provided if all the requirements for the annual increment were satisfied.
- (c) As the personal file had been sent to the Public Service Commission, the action regarding the confirmation could not be implemented.
- (d) As the applicant was not confirmed in his position, the duty free vehicle permit could not be issued to him.

Thereafter, at the inquiry held on 30.07.2019. Mrs. H.G. Chandralatha, Registrar of Hardy College of Technology appearing on behalf of the Director General stated;

That the Director General had indicated that the transfer of the applicant would be favorably considered in the 2020 Annual Transfer when he made the application. However, the Regional Office requested her that the family and educational conditions of the applicant should be considered, and he should be temporarily attached to a nearby Technical College with a view to facilitate his daily travelling to his working place. The Regional Office also requested her that it should be done on humanitarian basis.

The Regional Office by its letter dated 19.09.2019 sought this in writing from the Director General. In her letter dated 17.10.2019, she stated that the request of the Regional Office had been sent to the Ministry of Industry, Commerce, Resettlement for displaced, Cooperative Development, Vocational Training and Skills Development. However, no response has been received on the matter as yet from the said Ministry or the Respondent.

In terms of Section 14:12 of Chapter XLVIII of the Establishment Code of the Sri Lankan Government, there is no any hindrance to issuing salary increment and confirming the petitioner in his position.

Further, the Respondent has not submitted any acceptable reasons in order to justify the transfer of the petitioners. Further, depriving the petitioner of his due salary increment and refusing to confirm him in his position is akin to a punitive action taken by the Respondent against the petitioner.

It is evident that the Director General by stating that the charge sheet against the applicant has been sent to the Public Service Commission and misleading the complainant and the Human Rights Commission of Sri Lanka has committed an offence. Further, the Director General has not provided any opportunity to provide his innocence in the issue. This is also violation of fundamental rights of the applicant.

Conclusion

The transfer had been issued with an immediate effect totally disregarding the government transfer policy, and action had been taken in total contempt of the requirements of fairness and in violation of equal protection of the law enshrined in Article 12(1) and 12(2) of the constitution.

Although an officer can be transferred on disciplinary grounds, no disciplinary action warranting a transfer has been taken against the petitioner. Accordingly, the instant transfer is in violation of the Article 12(1) and 12(2).

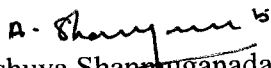
Recommendation

This transfer should be cancelled and provide a suitable working station, confirming the applicant in his position, issuing the annual increments for the years of 2015, 2016 and 2017, recommending his for the duty free vehicle import permit for the Public Servants and etc.

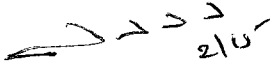
- Cancel the transfer of the Petitioner to Trincomalee Technical College.
- Confirm the applicant in his position
- Issue annual increments for the year 2015, 2016, 2017 that the petitioner has been deprived of

In terms of the provisions in Section 15 of the HRC Act, the respondent is requested to submit a report regarding the implementation of the recommendations to the Commission on or before 22.03.2021.

Further, the complainant is requested to notify the Commission concerning the implementation or non-implementation of the recommendation by the respondent within a week from the above date and the complainant is hereby informed that no request/notice should be taken into consideration thereafter.


Anushuya Shanmuganathan
Commissioner
Human Rights Commission of Sri Lanka.

Ms. Anushya Shanmuganathan
Commissioner
Human Rights Commission of Sri Lanka


M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka.

Dr. M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka