

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

1. Textile July Strikers Welfare
Association
No. 16/1, Marapola, Veyangoda.
2. Bandula Kumara Attanagoda
Hon. Secretary,
Textile July Strikers Welfare
Association
No. 16/1, Marapola, Veyangoda.
3. L. C. Perera
Hon. President
Textile July Strikers Welfare
Association
No. 16/1, Marapola, Veyangoda.

PETITIONERS

C.A. 852/2007 (Writ)

- 3A. K. P. Indrajothi Karunanayake
234/3/B, Nagalandawatta,
Hubutiyawa, Nittambuwa.

SUBSTITUTED-PETITIONER

Vs.

1. D. M.S Dissanayake
Commissioner of Labour
Industrial Relations
Labour Secretariat, Colombo 5.
2. W.J.L. Wijeweera
Secretary
Ministry of Labour
Labour Secretariat, Colombo 5.

3. P. B. Jayasundara
Secretary,
Ministry of Finance,
Colombo 1.
4. G. M. W. Ariyawansa
Co-ordinating Secretary to the President
Presidential Secretariat,
Colombo 1.
5. Pearl Weerasinghe
6. The Commissioner General of Labour
Labour Secretariat
Colombo 5.

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Chandimal Mendis with M. Walagala and
Madushika Jayawardena for the Petitioners

Vikum de Abrew D.S.G for the Respondents

ARGUED ON: 31.10.2012

DECIDED ON; 04.12.2012

GOONERATNE J.

In this writ application the 2nd & 3rd Petitioners along with 427 members of the 1st Petitioner Association described as “textileJuly Strickers Welfare Association”, who were involved in the island wide July strike of

1980, have sought a Writ of Mandamus directing the Respondents to give effect to the Cabinet decision marked P5a as approved by memorandum P5. Learned Senior State Counsel at the hearing admitted the Petitioners document marked P3 – P5 & P5a. In fact perusal of documents P3 – P5 and P5a are favourable to the Petitioners.

The Petitioners claim that as in paragraph 6 of the petition, that as a result of a general strike their members, inclusive of the Petitioners, lost their jobs, in view of the matters referred to in paragraph 4 of the petition. As such request was made to the then Government for redress, but the said workers could not be re-instated since the factory under the Textile Corporation was privatized. However the July strikers were paid their arrears of salary from July 1980 to May 1988 with all statutory dues, inclusive of EPF & ETF. It was also the submission of the learned counsel for the Petitioners that the Government officials assured the Petitioners to pay salaries thereafter. Paragraph 8 of the petition indicates that some of the July strikers were in fact reinstated.

However the Petitioners were agitating for their dues after 1989 and as a result some steps were taken by the authorities concerned and the Petitioners have annexed the recommendations made in their favour by the Additional Secretary, Ministry of Labour marked P3, and the

recommendation of the Human Rights Commission and the Ombudsman marked P4(a), P4(b) and P4(c) respectively. (admitted by Respondent).

Thereafter by a Cabinet Memorandum and a Cabinet decision marked P5 & P5a respectively the Petitioner had some indication or had a positive response to their continued agitation. Documents P5 and P5a taken together is a positive response to their request and it is the implementation of those documents that is being urged in this Writ application. Perusal of same no doubt gives the manner of settling the dues on behalf of the Petitioners as approved by the Cabinet of Ministers. In order to assist due compliance with the above position referred to in P5 and P5a petitioners completed the process by giving necessary details by document P6.

Petitioners urge that they have a legitimate expectation for the arrears salaries as per the said Cabinet decision. The legitimate expectation dictates that procedural fairness and protection is appropriate, since procedurally fair treatment was all that the Petitioners were legitimately entitled to expect from executive and administrative action. The contents of the documents marked as P5 and P5(a) and P6 and P6(a) further clarifies that the claim of the Petitioners is legitimate and the problem of the implementation of the same is purely logistical that has no relevance to the legal entitlement of the Petitioners.

The learned Senior State Counsel argued and emphasized on the contents of documents produced along with the objections marked R1-R5, and stressed that in view of R1-R5 this application is futile and without merit. It was the learned Senior State Counsel's position that 'R5' Cabinet decisions had not been challenged which was issued prior to filing this application by the Petitioner and that failure to do so will render this application without any merit and Writ of Mandamus will not lie in the circumstances of this case.

R5 issued on 10.5.2007 reads thus:

Cabinet Papers

Cabinet Paper 07/0565/340/006, a Memorandum dated 04.04.2007 by the Minister of Labour Relations and Manpower on "(A) Payment of Arrears of Salary, etc. to July, 1980 Strikers – Textile Mills – (B) Payment of Compensation etc. to Employees of Kabool Lace (Pvt.) Ltd." – (Cabinet decision dated 08.11.2006 on CP06/2017/230/048 refers) was deferred for the observations of the Minister of Finance and Planning. It was also agreed that the Minister should consider the alternative measures such as employment and scholarships to be provided to the children of employees concerned, in place of monetary compensation, as suggested in the ensuing discussion.

When I consider the entirety of the facts placed before this court, it is very unfortunate to state that the Petitioners were not given the dues promised to them by documents P5 and P5a. However the Government machinery seems to have not implemented P5 and P5a, and had taken

another turn to provide the Petitioners with an alternative suggestion in document R5. If due compliance with P5 and P5a are to be urged it would be necessary to quash document R5. As such based on policy, it appears that R5 remains to be in operation as it has not been challenged. Therefore I cannot disagree with the views of learned Senior State Counsel that the application for Writ of Mandamus is futile. Nor can this court ignore the position referred to in documents R2 – R5, with much emphasis to document R5. On the other hand over the years changes are bound to occur, with successive governments changing policy. As such this court need to be mindful of the consequences which will entail by the issue of the Writ.

Mandamus is only granted to compel performance of a duty of a judicial character where there has been a refusal to perform it in any way and not where it has been done in one way rather than another even though the method pursued may have been erroneous. Still less will the Court take upon itself to upset what amounts to a judicial decision based upon evidence and to direct a public officer to come to an opposite decision upon evidence which was not before him. 30 N.L.R at 84. A mandamus will not be granted to correct an erroneous decision as to fact. 2 C.L.W. 14:10 Times 65; 12 Law Rec. 176. The grant of a mandamus is a matter for the discretion of the Court. It is not a writ of right and is not issued as a matter of course. 1 C.L.W. 306. It is a rule almost inflexible that a mandamus will not be allowed where there is an adequate alternative remedy. 17 N.L.R. at 318; 2 C.L.W. 330; 35 N.L.R. 225.

The Court before issuing a writ of mandamus is entitled to take into consideration the consequences which the issue of the writ will entail. 34 N.L.R 33. A mandamus will not issue where it would be futile and could not be obeyed. 33 N.L.R 257; 1 C.L.W. 109, nor where its obedience by the officer to whom it is addressed will involve the violation

by him of some other provisions of law. 9 Times 70. A party applying for a mandamus must make out a legal right and a legal obligation 1 N.L.R at 35.

In all the above circumstances I am reluctantly compelled to refuse the application for a Writ of Mandamus. Application refused and dismissed without costs. In view of the peculiar circumstances of this case I direct the Registrar of this court to forward a copy of this judgment to the Hon Solicitor General for his perusal to explore the possibility of granting some relief in view of documents P5 and P5a.

Application dismissed.

JUDGE OF THE COURT OF APPEAL