

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

In the matter of an application under Article
140 of the Constitution for mandate in the
nature of writ of Mandamus.

C.W.Ratnayake,
"Sripathi"
Mahaheela,
Beliatta.

Petitioner

C.A/WRIT/App/No.279/2008

vs

1. National Savings Bank,
Servings House,
No. 1732, Galle Road,
Colombo 3.

And seven (07) others

Respondents

BEFORE : S.SRISKANDARAJAH, J (P/CA)
COUNSEL : Gamini Hethiarachehi,
for the Petitioner.
Uditha Egalahewa with Ranga Dayananda,
for the 1st to 7th Respondent.
Yuresha de Silva
for the 8th Respondent
Argued on : 13.12.2010
Decided on : 16.01.2012

S.Sriskandarajah.I

The Petitioner was appointed as a grade III officer of the 1st Respondent Bank with effect from 15.08.1979. The Petitioner's services were terminated on 16.11.1982 as the Petitioner was responsible for the inaccuracy of the statement of the account. The Petitioner made an application to the Political Victimization Committee appointed in 1994 and on the recommendation of the said committee the Petitioner was reinstated with effect from 18.11.1982 and he resumed duty on 05.04.1999. The Petitioner retired on 07.11.2000 as he has reached the retirement age of 55 years.

The Petitioner submitted that he received only 40.4% of his salary as his monthly pension and his pension gratuity also paid on the basis 40.4% of salary. He contended that he is entitled to an amount equivalent to 80% of his salary as pension but due to the fact that the Respondents have decided to deduct 39.6% of his salary for a period of 198 months on the basis of no pay leave the period where he was not in the actual service due to illegal termination of service. The Petitioner further contended that he is entitled to get his pension gratuity calculated on 80% of his salary.

The Petitioner made an application to the Human Rights Commission complaining that his Fundamental Rights have been violated in respect of the issues mentioned above. The Human Rights Commission recommended the Respondent to implement the recommendation of the inquirer appointed by the Commission and report to the commission before 30.11.2007.

The 3rd Respondent the General Manager of the National Servings Bank by his letter of 07.12.2007 informed the Petitioner that he will be paid his full pension with effect from December 2007 and he will not be entitled to get any arrears of pension for the period of 2000 November to December 2007 and allowances.

The Petitioner contended that the Human Rights Commission had categorically directed to pay him his full pension and other retirement benefits from his retirement date and that includes his arrears from November 2000 to December 2007. The Respondents contended that the recommendations of the Human Rights Commission were fully implemented granting the Petitioner the full pension and there was no recommendation or direction from the Human Rights Commission as regards the payment of any arrears to the Petitioner.

The Petitioner in this application submitted that the refusal and/or failure on the part of the 1st to 7th Respondent to implement the recommendation of the Human Rights Commission of Sri Lanka and the Political Victimization Committee to make the above payments are illegal, unreasonable and ultra virus and therefore he is entitled to obtain a writ of Mandamus to compel the 1st to 7th Respondents to implement the recommendation of the Human Rights Commission of Sri Lanka and the Political Victimization Committee.

The condition precedent to issue of mandamus is that the applicant for an order of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. In order ,therefore that a mandamus may issue to compel something to be done under a statute it must be shown that the statute imposes a legal duty; Halsbury's Law of England III rd Edition Volume II Page 104.

In *Ratnayake and Others v C.D.Perera and Others* (1982) 2 S.L.R.451 at 456 Sharvananda, J held:

“The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public

legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties.”

The Petitioner has no legal right to seek an enforcement of the recommendation of the Human Rights Commission. The Human Rights Commission has only made a recommendation to the 1st Respondent to take steps in relation to the Petitioner. The 1st Respondent claims that the Recommendation of the Human Rights Commission has been fully implemented. If the Human Rights Commission is of the view that the 1st Respondent has failed to comply with the recommendation the Human Rights Commission could take steps as provided by the Sri Lanka Human Rights Commission Act. For the reasons aforesaid this court cannot issue a mandamus to enforce the said recommendation. Hence this Court dismisses this application without costs

President of the Court of Appeal