

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

In the matter of an Application for a
Writ of Mandamus made under Article
140 of the Constitution of the Republic
of Sri Lanka

Mr.K.U.R.Wickremasinghe of
No.111, Sunethra Devi Road
Kohuwela, Nugegoda

Petitioner

Court of Appeal Application
No.681/2007

Vs.

1. Secretary
Ministry of Trade, Commerce &
Consumer
Affairs
21, Rakshana Mandiraya
Vauxhall Street
Colombo 02.
2. Secretary,
Ministry of Planning
Central Bank Bldg
Colombo 01.
3. Secretary,
Ministry of Public Administration & Home
Affairs, Independent Square, Colombo 07.

4. Secretary
Ministry of Policy Planning &
Implementation
Central Bank Building,
Colombo 01.
5. Director General, Establishments,
Independent Square
Colombo 07.
6. The Food Commissioner,
Food Commissioner's Dept.
No.330, Union Place,
Colombo 02.
7. Director of Pensions,
Office of the Director of Pensions
Colombo 01.
8. The Hon. Attorney-General,
Attorney-General's Department
Colombo 12.

Respondents

Before: S. Sriskandarajah, J. P(C/A)

Counsel: S.P. Sriskantha,
for the Petitioner
Ms.M.M.B.Fernando DSG
for the Respondents

Argued on: 23.02.2011

Decided on: 25.07.2011

S.Sriskandarajah J

The Petitioner in this application is seeking a mandate in the nature of a Writ of Mandamus compelling anyone or more of the Respondents to pay and settle the Petitioner's entitlements i.e. Balance salary, Balance Pension and consolidated interest specified in document marked P12.

The Petitioner was appointed as a Food Control Inspector in the Food Control Department with effect from 1st July 1972. By letter dated 17th February 1978 the Petitioner was informed that the Provident Fund Scheme, to which he was originally admitted had been abolished and he was now absorbed into the Pension Scheme. The Petitioner submitted that whilst he was serving at the Regional Office of the Food Control Department in Galle, he was informed by the Food Commissioner, that the post of Food Control Inspector had been suppressed and hence his services had been terminated. At the time of termination of the Petitioner's employment he was 49 years of age and his pension was calculated based on his services of 19 years. The Petitioner contended that the said post of Food Control Inspector was never suppressed and he had been misled by the said letter of termination and that his services had been wrongfully terminated 11 years before his compulsory age of retirement. He claimed that in terms of the circulars issued by the Ministry of Public Administration a total sum due to the Petitioner as at 3rd of June 2007 by way of balance salary, balance pension and consolidated interest is Rs.4,523,014/22. He has sent a letter of demand on the 16th of May 2007 through a lawyer, but he has not received any response from the Respondents.

The Respondents contended that on the year 1990, the Cabinet of Ministers took a decision upon the recommendation of the Salaries and Cadre Committee pertaining to the Food Department of the Ministry of Food and Co-operatives to re-organize the

activities of the Food Department and to retain the services of certain officers and suppress the balance post on a similar procedure that was adopted to close down the Department of Marketing. Accordingly 1149 posts were suppressed, including 8 posts of Food Inspectors, and such officers were placed on retirement from 1st February 1992, and the petitioner who was holding the post of Food Inspector was offered a placement in the Social Service Department. However, the Petitioner refused to accept the said posting and indicated his willingness to go on retirement and also requested that the compensation and pension be paid expeditiously. In view of the request of the Petitioner, Petitioner's retirement was effected and he was retired from 1st of February 1992.

The decision to suppress the post of Food Inspectors to which the Petitioner belongs was made by a Cabinet decision and it is a policy decision of the government, steps were taken by the Respondents in order to retire the officers who were holding the suppressed post in accordance with the procedure adopted in similar situations. In this instant case the Petitioner was in fact offered on humanitarian grounds to place him in another government department and continue his service, but the Petitioner, by his letter dated 29.01.1992 has informed that he wishes to go on retirement and has requested the authorities to pay compensation and pension expeditiously. In view of this fact, the Petitioner's compensation and pension was paid. The Petitioner by this application is seeking a Mandamus to pay his balance salary up to the date on which he reaches his retirement age, and pension should be calculated according to the salary that he would have received if he has retired on his retirement age. The Petitioner is seeking these rights after 15 years of his retirement, and the Petitioner by his letter dated 29.01.1992 has refused to accept a posting in another government department, and has requested that he be retired. In these circumstances the Petitioner cannot claim that in the normal circumstances he would have served until he reaches his retirement age.

In view of the above, the Petitioner is not entitled to claim for the balance salary and the other benefits as of right and there is no public duty on the respondents to grant those benefits to the Petitioner. In *Ratnayake and others v C.D.Perera and others* 1982 2 SLR 451 at 456 Sharvananda,J with Victor Perera,J, and Colin-Thome,J, agreeing 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.”

Hence the Petitioner is not entitled to a Writ of Mandamus, as prayed for in this application and this Court dismisses his application without costs.

President of the Court of Appeal