

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

1. H. P. Indra
No. 216A, Galdora Road,
Boralugoda,, Kosgoda.
2. H. G. Chandradasa
Batathumbagahawatta
Gonapinuwala.

C.A 102/2008 (Writ)

PETITIONERS

Vs.

1. Mr. D.M. Jayarathne
Hon. Minister of Plantation
Industries
Ministry of Plantation Industries
55/75, Vauxhall Lane,
Colombo 2.
3. Dr. Sarath Amunugama
Hon. Minister of Public
Administration
Independence Square
Colombo 7.

And 08 others.

RESPONDENTS

BEFORE: Sathya Hettige P.C. J. (P/C.A) &
Anil Gooneratne J.

COUNSEL: Rohan Sahabandu with Manohari Perera
for Petitioners
Vikum de Abrew S.S.C
for 1st, 2nd, and 5th – 9th Respondents

ARGUED ON: 02.06.2010 & 06.08.2010

WRITTEN SUBMISSIONS FILED ON:

28.01.2011 (Petitioners)

01.02.2011 (Respondents)

DECIDED ON: 08.03.2011

GOONERATNE J.

The two Petitioners to this application being employees of the Janawasa Commission pray for a Writ of Mandamus in terms of Paragraphs 'c' & 'd' of the prayer to the petition, on the basis that their services were terminated for political reasons after the 1977 General Elections. Paragraph 2 of the petition name the Respondents with respect to the post held by them but as regards the 2nd and 7th Respondent's description stated therein seems to be incorrect. It is the case of petitioners that they were politically victimized for the reason given in paragraph 3 of the petition. A committee was appointed (P1) to look into grievances of persons who were politically victimized (paragraph 6 of petition) and report of a committee making

recommendations had been produced marked P2. The Cabinet had on 12.3.1997 directed that a report be submitted by one Abeyratne who headed another committee who reported on P2 above. The recommendations of the said Abeyratne Committee is marked P3, but such recommendations were not implemented, as stated by the Petitioners.

In the petition the following matters are also pleaded.

1. The Petitioners state that since the said recommendations were not implemented, they with the other politically victimized employees of the Plantation sector made continuous representation to the government. The Petitioners state that one of the politically victimized plantation sector employee has received a letter dated 07.03.2001 from the Land Reform Commission stating that though he was recommended Rs. 36000/-, the Commission is unable to pay same as the required money has not been released by the Treasury to them.
2. However as the said recommendations (P2 and P3) were also not implemented, the Cabinet on 10.11.2000 appointed a Cabinet Sub Committee to look into matters where the respective political victimization Committees made recommendations for a measure of relief, but due to various reasons such relief has not yet been provided. The Petitioners annex hereto an extract of relevant Cabinet decision issued by the Cabinet Secretary marked as P5.
3. The Petitioners state that their Cabinet Sub Committee which was headed by the then Minister of Public Administration requested information from the Secretaries of each Ministry about employees who have not yet been provided with the relief recommended by the political victimization committees by letter 05.12.2000. The Petitioners annex hereto the said letter marked as P6.
4. The Petitioners state that the said Cabinet Sub Committee inquired again as to whether the employees including Petitioners are truly being victimized under the 1977 political victimization.

5. The Petitioners state that they are aware that the said Cabinet sub Committee has recommended that since the Cabinet has already approved that the compensation should be given to the 1977 politically victimized employees of the Plantation sector, the required amount of money should be released immediately from the Treasury. The Petitioners annex a copy of the said recommendation marked P7 and pleaded as part and parcel of the Petition.
6. The Petitioners state that they are aware that the recommendations of the Cabinet Sub Committee have been approved and decision was taken to implement the recommendations by the Cabinet on the 26.11.2001. The petitioners annexed hereto Cabinet Memorandum dated 26.11.2001 marked as P8.
7. The Petitioners state that they are aware that the Interim Report of the Cabinet Sub Committee and its recommendations were sent to the respective Ministries, Director General- Combined Service and to the Auditor General. The Petitioners state on the perusal of the said interim report or the Cabinet Sub Committee recommendations it is clear that, the Petitioners would be able to get their relief as recommended by the Cabinet Sub Committee.
8. The Petitioners state that they are aware that the Director General – Establishment has informed all the Secretaries to all the Ministries that the recommendations of the Cabinet Sub Committee should be implemented immediately. The Petitioners annexed hereto the letter dated 28.11.2001 marked as P9.

The Petitioners also produce documents P10, P10A – P10C supporting their case. P11 is a judgment of this court pertaining to some 1980 July strikers. Letter P12 is marked and produced requesting the 2nd Petitioners to collect a payment of Rs. 10,000/- by the Ministry of Plantation Industries. P12 is dated 20.09.2006. Letters P13 & P13A are letters protesting for the payment of Rs. 10,000/-, when in fact their entitlement is in the range of

Rs. 36,000/-, as pleaded by the two Petitioners. P13 the signatory is W.H.K.S Jayaratne who is not a Petitioner to this application, although address and name of 2nd Petitioner appears on the top right hand corner in P13.

The Petitioners contend that the Government appointed Committee recommended, and about 4392 employees were to be reconsidered for relief. Since document P7 was not complied with Court of Appeal issued a Writ of Mandamus (vide P11), to comply with P7. Petitioners also urge that in terms of the Cabinet decision Petitioners are entitled to Rs. 36,000/- P4 dated 07.03.2001. Petitioners relying on document P7 and P9, states that the amount to be paid has been decided (column 5 of P7). Subsequent Cabinet decision to vary Rs. 36,000/- to Rs. 10000/- has not been explained by the Respondents. Petitioners state new amounts are approved (as in P4). Petitioners have a legitimate expectation to be paid Rs. 36,000/- as from March 2001 based on document P4.

The Respondents inter alia plead in their objections that compensation in an amount of Rs. 10,000/- had been paid to the two Petitioners upon the recommendation of the Committee and refer to such recommendation marked R1 & R2. Petitioners, according to the objections of Respondents had been paid on 10.10.2006 & 12.01.2007 respectively, in

pursuance of a decision by the Cabinet of Ministers dated 08.09.2004, in furtherance of the report marked R3 (decision of 08.09.2004 above not produced for perusal of this court). Respondents do not specifically deny paragraph 13 to 18 of the Petition but states that matters referred to therein had culminated in the decision of making an exgratia payment to the petitioners as stated above over and above the quantum recommended by document R3. Respondent's position is that the Petitioners are not eligible to make a further claim for compensation and demand Rs. 36,000/-.

The important question that needs to be considered is whether a Writ of Mandamus would lie in the circumstances of this case. Material available suggests that the two Petitioners in fact had been paid but not to their expectation, of a sum of Rs. 36,000/-. The Government on principle, accepts payments to politically victimized employees. Result being that after so many years of agitation by those who claim to have been victimized were paid very much later. Therefore the balance due to the two Petitioners as claimed by them is the issue that concerns this court. Does a Writ of Mandamus lie to claim the balance sum?

Scope of Mandamus is expanding in public law and the required public duty does not necessarily have to be imposed by statute; it may be sufficient for the public duty to have been imposed by common law,

or even custom or contract. (*S.A de Smith Judicial Review on Administrative Actions 2nd Ed. at pg. 561/562; R vs. Secretary of State for War (1891) 2 QB at 335*). I cannot agree with the submissions of the Respondent in this regard that Mandamus does not lie. Mandamus may lie if properly established. Petitioners have in fact established a legal right to perform a duty. Cabinet of Ministers have authorized and recognized in principle the payment of compensation. If due recognition is not given to a Cabinet decision law may be meaningless. But the issue of a prerogative writ is discretionary and could be refused on grounds of delay etc.

The two other questions that I am concerned is the relief sought in terms of sub paragraph 'd' of the prayer to the petition, and whether the Cabinet was in contemplation of enhancing the amounts reflected in document R3, and that the Cabinet of Ministers decided to grant the amount of Rs. 36,000/-. At pgs. 2,3 & 4 of R3 gives details of the compensation package applicable to the plantation sector. R3 suggest several categories to be paid differently. The Janavasa Commission is categorized, with the recommended scale of payment. Petitioners necessarily fall within that category. Therefore I cannot apply document P4 (which refer to the Land Reform Commission) and consider payments recommended for other categories of the Plantation Sector. This position taken by the Petitioners is

somewhat misleading. Nor can I rely on the judgment reflected in document P11, as it refer to another category of employees namely 1980 July strikers, where the Court of Appeal considered enhanced retiral benefits under Circular No. 44/90.

I cannot ignore the submissions on the question of delay. When the Petitioners were made aware of the fact that payment of Rs. 10,000/- is the final compensation package, on the dates of payment to them, an application should have been filed before this court promptly. Instead Petitioners filed the present application only by 31st January 2008, which is about one year after receipt of compensation. Petitioners could not have had a legitimate expectation for enhanced payment after receipt of compensation in the years 2006 and January 2007 as indicated in this judgment and by the Respondents. Delays have not been explained to court. Vide *Samaraweera vs. Ministry of Public Administration* 2003(3) SLR 64; *Dahanayake vs. Sri Lanka Insurance* 2005 (1) SLR 67. On inordinate delay the following cases reported are also considered. 78 NLR 35; 77 NLR 313; 71 NLR 356.

When I consider all the aforesaid matters and the circumstances of this case it is unfortunate that this court cannot grant any relief to the two Petitioners as prayed for in their petition filed of record. Further this court cannot issue Mandamus, as the Writ of Mandamus cannot command the

duty in question to be carried out in a specific way. – Halsbury’s Laws of England 4th Ed. Paragraph 90.

Therefore this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Sathya Hettige J.

I agree.

PRESIDENT OF THE COURT OF APPEAL