

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

C.A. 622/2010 (Writ)

1. Nadarajah Kumarasivam  
No. 51 3/1, 33<sup>rd</sup> Lane,  
Colombo 6.
2. Ramalingam Suntharalingam  
Sivan Lodge  
Urumpirai West, Urumpirai,  
Jaffna.
3. Vallipuram Ganeshalingam  
No. 4A, International Buddhist  
Centre Road, Colombo 6.  
And presently of No. 9, Windsor  
Road, Ilford Essex, 1G1 1HG,  
United Kingdom.
4. Subbiah Sanmuganathan  
No. E/2/6, Anderson Flats,  
Narahenpita, Colombo 5.  
And presently of No. 118, Bodley  
Road, New Malden, Surrey, KT3  
5QH, United Kingdom.
5. Sathasivam Thambithurai  
Suthumalai North  
Manipay, Jaffna.
6. Thambipillai Rajathurai  
No. 46/2/1, 33<sup>rd</sup> Lane,  
Colombo 6. And presently at No.  
122, John Tabor Trail, Toronto,  
Ontario, M1B 2V2, Canada.

7. Kathiravelu Ganesadasan  
Suthumalai South,  
Manipay,  
Jaffna.
8. Muthucumar Pathmanathan  
No. 125, College Street,  
Trincomalee and presently of  
No. 70, Kirkcroft,  
Wigginton York, YO 32 2GH,  
United Kingdom.
9. Sivacoomarasooriar  
Kathirgamacoomarasooriar  
No. 44/5, 4/2, Greed Wood  
Home, 'Dharmarama Road,  
Colombon6.

**PETITIONERS**

C.A 622/2010 (Writ)

Vs.

1. W. Karunajeewa  
The Chairman  
People's Bank, Head Office,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.
- 1A. Gamini Senarath  
The Chairman  
People's Bank, Head Office,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.
2. K. H. L. Chandrasiri  
Deputy General Manager  
Human Resources,

Head Office,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.

3. The People's Bank

Head Office,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** M. A. Sumanthiran with J. Arulanathan &  
A. Logenthiran for Petitioners  
Sanjeewa Jayawardena P.C. with Rajeev Amarasuriya  
for 1A, 2 & 3 Respondents

**ARGUED ON:** 27.11.2013

**DECIDED ON:** 27.03.2014

**GOONERATNE J.**

The nine Petitioners in this Writ Application have sought a Mandate in the nature of Writ of Mandamus to compel the Respondents to implement the recommendation of the Human Rights Commission contained in

document marked P3 dated 6.11.2008. Application has been filed in this court by Petition dated 20.9.2010. Petitioners claim that they were absorbed into the People's Bank by order (R1) made by the then Finance Minister Hon. Dr. N.M. Perera in terms of Section 24(1) of the People's Bank Act. Prior to such absorption Petitioners were employees of former Co-operative Banks.

The complaint of the Petitioner as contained in the pleadings and as submitted to this court by learned counsel for the Petitioners is that the failure on the part of the authorities to evaluate the qualification and experience of the Petitioners in relation to their designation in terms of Section 24(1) of the above Act. As such Petitioners filed an application with the Human Rights Commission and as pleaded in paras 4 to 8 of the petition a recommendation was made in favour of the Petitioners (P3). There is also reference to P4 by the Petitioners. However the Respondents have failed to implement such recommendation. P5 is a letter addressed to His Excellency the President on non implementation of the recommendation. The response to P5 is contained in letter P6 which is self explanatory.

The Respondent resist this application on several points and more particularly the material contained in para 2 of the objections of the Respondents which suggest the grounds of objections which are fundamental

to a Writ Application of this nature. It is inter alia pleaded that the application is not amenable to the writ jurisdiction of this court, laches, acquiesce since Petitioner have already retired and relief sought are misconceived, recommendations of Human Rights Commission is illegal, ultra vires since it cannot review its own decision and as such functus, matter of contract, necessary parties not before court etc.

In perusing the material placed before this court by way of pleadings and the annexed documents, it is very apparent that the Petitioners are guilty of laches. There is in fact an unexplained delay of almost 2 years. (vide (1928) 29 NLR 389; 69 NLR 211; 1982 (1) SLR 123, 130, 205(1) SLR 67). I do agree with the Respondents that the People's Bank is a primarily a licenced Commercial Bank and the District Co-operative Bank is a Development Bank, which functions of one another may be different, as such the 3<sup>rd</sup> Respondent would have undergone logistical and administrative difficulties in the absorption process of the Petitioners. The Petitioners who were employees of the former Vavuniya District Co-operative Bank entered into contracts with 3<sup>rd</sup> Respondent to be bound by its terms and conditions, letters R2(a) – R2(i) being letters of appointment containing several conditions. (in this regard further documents are marked and produced (R3(a) to R11(a) as described in para 4C

of the objections). It appears to this court that this is more or less a matter of contract and cannot be subject to the writ jurisdiction of this court.

Respondents also rely on the determination of the Human Rights Commission marked and produced R16 and report R17. Document R17 of 17.3.2008 is a legally acceptable document which disclose no violation and infringement of fundamental rights. As such the letters relied upon by the Petitioners P3 & P4 appears to be an inconsistent illegal and an arbitrary decision. The Respondent in their objection itself refer to several matters to demonstrate the illegality of the Human Rights Commission orders in P3 & P4 and this court cannot reject Respondent's position on same or take it lightly.

The provisions of the Human Rights Commissions Act does not contain provisions to revise or amend its own recommendation. Respondents agree that certain other statutes like the Debt Conciliation Act, vest its Board to review its own orders and pass such other order it deems fit. Similar provisions are not found in the Human Rights Commission Act. As such once an order is made the authority concerned under the human Rights Act would be functus. I would further elaborate the concept of functus officio.

### Functus officio

A judgment written out by a Judge after he became functus officio and delivered by his successor in office with the consent of parties is bad notwithstanding such consent. 7 NLR 337; 1 CWR 68.

Pg. 1131 Strouds Judicial

Dictionary – pg. 1131..... Judge has made order for a stay of execution which has been passed and entered, he is functus officio, he nor any other Judge of equal jurisdiction has jurisdiction to vary the terms 1941 3 AER 417.

The above legal position would deny the Human Right Commission to vary its own order P3. As such I hold that P3 is illegal and cannot be implemented and not amenable to the writ jurisdiction of this court and on that basis also this application need to be rejected.

The other matter emphasized by the Respondent is that the relief sought directly or indirectly in a way cling on to payment of salary, arrears of pension are purely within the realm of contracts. As such not amenable to the writ jurisdiction of this court.

The Petitioners are persons who have retired. As such even if an expectation of a right exists it certainly cannot amount to a legitimate expectation.

However before I conclude I would advert to the following authorities to demonstrate the discretionary nature of the Writ of Mandamus and as such, I am reluctantly compelled to reject this application.

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; 1C.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 in view of the above matters referred to in this judgment I hold that this is not a fit and proper case to extend the writ jurisdiction of this court. As such I dismiss this application without costs.



JUDGE OF THE COURT OF APPEAL