

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

**In the matter of an Application for mandates
in the nature of *Writ of Certiorari, Mandamus
and Prohibition* under article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka**

CA/WRIT/ 05/2013

CA/WRIT/06/2013

1. T.M.C.S Bandara,

No. 152/05 Aluwihare, Matale

Petitioner in CA/Writ/05/2013

2. S.J.S.D. Perera,

No.465 Sarananda Mawatha,

Pahala Eriyagama, Peradeniya

Petitioner in CA/Writ/06/2013

Vs,

1. N. Abayawickrema,

Director General of Pensions,

Department of Pensions,

Maligawatte Secretariat,

Colombo 10.

2. P.B. Abeykoon,

Secretary, Ministry of Public

Administration and Home Affairs,

Independence Squire,

Colombo 07.

- 2A. J. Dadallage,
Secretary,
Ministry of Public
Administration and Home Affairs,
Independence Square,
Colombo 07.
3. D.M.K.G.T.T. Karunaratne,
Divisional Secretary- Kandy Four
Gravets and Gangawatakorale
Divisional Secretariat,
Kandy.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
5. S.S. Hettiarachchi,
Director General of Pensions,
Department of Pensions,
Maligawatte Secretariat,
Colombo 10.

RESPONDENTS

Before : **Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel : Pasindu Silva for Petitioner,
Suranga Wimalasena SSC for the Respondents.

Argument On: 15.07.2015

Written Submissions On: 12.10.2015, 15.10.2015

Order On : 20.01.2016

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioners to the two applications before this court CA/05/2013 and CA/06/2013 namely T.M.C.S Bandara of No. 152/05 Aluwihare, Matale and S.J.S.D. Perera of No.465 Sarananda Mawatha, Pahala Eriyagama, Peradeniya had come before this court seeking inter alia,

- b). A mandate in the nature of a *Writ of Certiorari* quashing the decision of the Respondents and/ or of the authorities to recover any amount from the pension of the Petitioner, reflected in P-22 and/or any other document/s incidental thereto ;
- c). A mandate in the nature of a *Writ of Certiorari* quashing the decision of the Respondents and/ or of the authorities to reduce and/or deduct any amount from the pension of the Petitioner, reflected in P-22 and/or any other document/s incidental thereto ;
- d). A mandate in the nature of a *Writ of Certiorari* quashing the decision of the Respondents and/ or of the authorities to recover Rs. 639538.89 from the Petitioner, reflected in P-23 and/or any other document/s incidental thereto ;
- e). A mandate in the nature of a *Writ of Certiorari* quashing the part/s of the decision of the Respondents and/ or of the authorities reflected in P-28 to reduce and/or deduct and/or recover any amount from the Petitioner's pension;
- f). A mandate in the nature of a *Writ of Mandamus* directing the Respondents to pay the Petitioner's Pension without any reductions and/or deductions;

- g). A mandate in the nature of a *Writ of Mandamus* directing the Respondents to reimburse any amount reduced and/or deduct and/or recover from the Petitioner's pension forthwith;
- h). A mandate in the nature of a *Writ of Prohibition* preventing the Respondents and/or the relevant authorities from making any reductions /and/or deductions and/or recoveries from the pension and/or from any other allowances and/or entitlements of the Petitioner.

At the time the present cases were filed, both Petitioners were retired from the government service having served as Investigating Officers in the Department of Local Government.

The Petitioner in Application 05/2013 T.M.C.S. Bandara has been in the Public Service since 1965, was appointed to the post of Investigating Officer Grade II w.e.f. 01.02.1972 and the Petitioner in 06/2013 S.J.S.P Perera has been in the Public Service since 1963, was appointed to the post of Investigating Officer Grade II w.e.f. 10.07.1973 both after a competitive examination.

Both Petitioners submitted before us that they were promoted as Investigating Officer Grade I in the Department of Local Government w.e.f. 08.07.1981 with a salary scale of Rs. 6840-6x 240, 6x300 – 10 800/- which was later back dated to 04.05.1981. On 01.01.1990 both Petitioners were appointed to the post of Investigating Officer Grade I in the Central Province Public Service.

When the Public Servants were given an option to retire under Public Administration circular 44/1990, both Petitioners opted to retire under the said circular and accordingly the Petitioners retired from the Public Service w.e.f. 01.01.1991.

The two Petitioners did not contest the fact that both of them were belonging to a salary scale of 22,560-3x 480- 15x600 -33,000 at the time they retired and their pension was calculated based on the above scale.

The salary revisions introduced to the Investigating Officers in the other Departments such as Railway and Postal since year 1981 were not applied to the Investigating Officers who were serving at the Department of Local Government which created salary anomalies between the Investigating Officers serving in the Department of Local Government and the Investigating Officers who were in the other departments.

The salary scale of the Investigating Officers belonging to the Department of Local Government was also revised by Public Administrative Circular 2/97 (iii) and the new scale of the said category of

officers was referred to as T-3-7-5 by the said circular and it represented a scale of Rs. 92, 580- 15x 240 – 129, 480.

However at the time the said circular was issued in November 1997 the Petitioners have already retired, but the Ministry of Provincial Council and Local Government decided to extend the benefit of the said salary revision to all retired Investigating Officers by placing them on the same scale on the date of their retirement subject to the condition that the revision of pension will take effect from 1st January 1997.

Petitioners did not challenge this position before us and in fact Petitioners submission before us was that, all their issues were solved and the payments were duly made. The grievance of the Petitioner before this court was a subsequent decision taken by the Department of Pension to recover purported excessive amount paid to the Petitioners as evinced in documents produced marked P-22 and P-23.

The Petitioners argument before this court was that the original award dated 05.05.2009 was made after several consultations, discussions and also obtaining instructions from the Honorable Attorney General. The Petitioners further submitted that after obtaining such instructions and directives the Petitioners were duly paid with their revised pension by the Department of Pensions taking in to account the respective pension circulars applicable to public servants. In this regard we observe a directive by the 1st Respondent to Divisional Secretary, Abanganga Korale to pay the revised pension w.e.f. 01.01.1997 by calculating the pension, taking in to account all pension conversions since 01.01.1991.

The argument of the Learned State Counsel who represented the Respondents was two fold. His first argument was that the Petitioners do not have an absolute right to a pension and therefore he is not entitled to any relief by this court. He secondly argued that in any event the claim by the Petitioners cannot be sustained on its merits since the decision and the calculation referred to in the two impugned documents P-22 and P-23 are made in good faith by ad-hearing to the provisions of the relevant circular which categorically states that the revision of pension benefits of Investigating Officer of the Department of Local Government will become effective from 01.01.1997.

Rule 01 of the Minutes of Pension Provides,

“Public Servants have no absolute right to any pension or allowance under these rules, and the crown retains the power to dismiss a Public Servant without compensation.”

In the case of *Gunawardena V. Attorney General 47 NLR 359* Supreme Court discussed the above provision as follows,

“It was contended, a Court of Law has no jurisdiction in any matter relating to payment of pensions to retired government servants, such matters depending entirely upon the grace and bounty of Crown. In my opinion the Learned Commissioner’s judgment upholding this objection was correct. The payment of pensions to retired government servants at the relevant date was regulated by certain rules sanctioned by the Secretary of State for Colonies and incorporated in the Minutes of Pensions dated 05.02.1934. Rule 1 expressly provides that public servants have no absolute right to any pension or allowance under these rules.”

The above decision was followed in the case of *Attorney General V. Abeysinghe 78 NLR 361* in the said case *Thennakoon CJ* observed,

“The expression” no absolute right to my mind means “no legal right” It is a signal hoisted by the draftsman to indicate both to the beneficiaries under the Minutes of Pensions and to the Courts that the Minutes are not to be taken as creating rights enforceable in the courts. The “no legal right” concept contained in rule 1 of the Minutes is then reinforced by the text of rules 2 and 15 which contain the expressions “ may be awarded” and “may in his discretion granted”

Whilst concurring with the above decision Tittawella J further observed,

“I agree with the Chief Justice that the Minutes on Pensions create no legal right infavour of a Public Servant and that the court have no jurisdiction to entertain an action praying for a declaration in regard to his pension and the date from which he should be paid. I also agree that in Sri Lanka there is no constitution provision or any other provision of written law which has the effect of altering the provisions of rule 1 of the Minutes of Pension.”

When reaching the above decision the Supreme Court was mindful of the similar provision contained in section 30 of the Superannuation Act of 1834 which deals with Superannuation benefits for public servants in England and interpretations given by the Chancery Division and the King’s Bench on this provision.

In the case of *Yorke V. The King [1915] 1 KB 852* the Kings Bench commented,

“I cannot consider whether a mistake has been made in the calculation of the suppliant’s pension or not; I can only say that the suppliant has no legal right to ask this court to decide either that he is entitled to a pension, or as to the basis upon which it should be calculated.”

We observe that the decision in *Yorke V. The King* deals with almost similar situation to the two cases before us, where the Petitioners complain against the second calculation made by the 1st Respondent.

When considering the position taken up by our courts as considered by me in this judgment, it is not possible for this court to agree with the submissions made on behalf of the Petitioners when they argued that the Respondents have arbitrarily deprived of the entitlements given to public officers under Pension Circulars 16/1994, 01/1997 and 05/1999.

Learned State Counsel without prejudice to his first argument further submitted that even though the Petitioners are not entitled for a pension as of right and therefore not entitled to question the correctness of the decision taken to recover the arrears of pension already decided, the decision to recover the said over payment was made with a valid legal basis.

As admitted by both parties before this court the investigators belonging to the Department of Local Government was placed at T-3-7-5 scale with effect from 01.01.1997. when extending the validity of the said circular to the retired officers who retired prior to 01.01.1997, it was necessary to first calculate the revised salary based on the last drawn salary and then determine the pension by reference to the revised lost drawn salary and the said determined pension was to be paid w.e.f. 01.01.1997. The argument of the Petitioners before this was that, even though the revised pension was paid w.e.f. 01.01.1997 the Petitioners are entitled to the revisions proposed to the pension under pension circular 16/1994, 01/1997 and 05/1999.

This court cannot agree with the above contention of the Petitioners, since the Petitioners are to be paid revised pension only with effect from 01.01.1997.

Therefore any revisions proposed by pension circulars prior to 01.01.1997 will have no bearing on the calculation made to the Petitioners pensions.

For the reasons set out above we see no merit in the Arguments raised by the Petitioners before us and therefore this court is not inclined to grant any relief to the Petitioners in both applications. Both Applications are dismissed without cost.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL