

**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 of the Democratic
Socialist Republic of Sri Lanka for a Writ in
the nature of *Mandamus*.

W. Karunaratne,
Puhulkotuwa,
Buttala.

Petitioner

CA (Writ) Application No: 133/2016

Vs.

1. Uva Provincial Public Service Commission,
Badulla.
2. The Secretary,
Uva Provincial Public Service Commission,
Badulla.
3. The Secretary,
The Ministry of Health,
Uva Provincial Council,
Badulla.
4. The Provincial Director of Health Services,
The office of Uva Provincial Director of
Health Services,
Uva Province,
Badulla.

5. The Director General of Health Services,
The Department of Health,
“Suwasiripaya”,
Baddegama Wimalawansa Mawatha,
Colombo 10.
6. The Director of Pensions,
The Department of Pensions,
Maligawatta,
Colombo 10.
7. The Secretary,
The Ministry of Health,
“Suwasiripaya”,
Baddegama Wimalawansa Mawatha,
Colombo 10.
8. The Secretary,
The Ministry of Public Administration,
Independent Square,
Colombo 07.
9. The Director of Establishments,
The Ministry of Public Administration,
Independent Square,
Colombo 07.
10. The Director General of Establishments,
The Ministry of Public Administration,
Independent Square,
Colombo 07.

11. The Director General,
Anti Malarea Campaign,
Narahenpita,
Colombo 05.

Respondents

Before : A.L. Shiran Gooneratne J.

Counsel : L. Amarasinghe with N. Malkumara for the Petitioner.
Indula Ratnayake, SC for the Respondents.

Argued on : 09/01/2018

Written Submissions filed on: 29/03/2018

Judgment on : 07/06/2018

A.L. Shiran Gooneratne J.

The Petitioner has invoked the jurisdiction of this Court to seek mandates in the nature of writs of Mandamus,

- a. to direct the 1st to 11th Respondents to absorb the Petitioner to the Technical Service salary group and to pay the areas of salary with effect from 1995, ie, the year of appointment, and the areas of pension as applicable,
- b. to direct the 1st to 11th Respondents to amend the Public Administrative Circular to include the post of Driver Overseer, and the relevant salary code and grade.

The petitioner submits that in terms of the Public Administrative Circular No. 96 marked P4, and taking into consideration the duties and responsibilities of Driver Overseer, the Petitioner was on a higher salary scale than the Public Health Inspector Grade II and Midwife, as reflected in documents marked P- 4A and P- 4B. However, by Administrative Circular No. 2/1997, (hereinafter sometimes referred to as “the circular”) the relevant salary scale and grade did not exist for the post of Driver Overseer and therefore, the Petitioners salary was paid in terms of the salary scale assigned to Heavy Vehicle Driver Class - I, as reflected in the relevant documents marked P9, P10 and P11. The Petitioner pleads that the failure of the Respondents to include the post of Driver Overseer and the relevant salary scale and group applicable to the said post, has caused injustice to the Petitioner.

The Petitioner has relied on the Judgment in case, C.A. No. 407/2009, delivered by this Court, marked as P27, and submits that in a similar application filed by a Driver Overseer, the Respondents were directed by Court to rectify the discrepancy caused to the said post by amending the circular.

The Petitioners application is based on the said Judgment. It is observed that the Judgment cited has no bearing to the present application since the terms of settlement reached in that case was confined to the said case and therefore, has no precedence for any other application of similar nature, as stated in the said Judgment.

In this background the Respondents contend that the Petitioner;

- a. has no legal right to seek a writ of Mandamus to have the said circular amended for the Petitioner to be absorbed into the Technical Service.
- b. the post of Driver Overseer is not an approved post in the Uva Provincial Public Service, where the Petitioner was attached to, prior to his retirement.

In the circumstances, the Court has to look into whether the conduct complained by the Petitioner envisage a breach of a specific right and/ or the Respondents failure, to absorb the Petitioner into the Technical Service, by amending the said circular. The post of Driver Overseer does not exist as an approved post or salary group in the Uva Provincial Public Service. Therefore, the Court cannot impose a legal duty upon the Respondents to create a post which is not recognized by the Uva Provincial Public Service. As noted earlier the Judgment marked P27, does not create any precedence over this matter. Accordingly, the Petitioner has failed to convince Court of an existing legal right where the Petitioner has been deprived of by the omission or an act which can be attributed to the Respondents.

In the case of *Credit Information Bureau of Sri Lanka Vs. Messrs Jafferjee (Pvt) Ltd. (2005 1SLR 89)*, the court held that;

“there is rich and profuse case law on mandamus on the conditions to be satisfied by the applicant. Some of the condition precedent to the issue of mandamus appear to be.....”

Inter alia, the court held,

“the applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought.....”

As observed in the said case, “the foundation of Mandamus is the existence of a legal right.” (Napier ex parte 1852 18 QB, 692 at 695)

Accordingly, the Petitioner has no clear legal right to demand the Respondents to amend the Public Administrative Circular No. 96, which is the basis in which writ of Mandamus has been sought. Therefore, no legal duty can be cast upon the Respondents to amend the said circular in order to absorb the Petitioner to the Technical Service Salary code and grade.

As pointed out by the Respondents, the Petitioner is seeking relief almost after 9 years of retirement from the Provincial Public Service. No reasons have been stated for the inordinate delay in submitting this application. Therefore, the Petitioner is clearly guilty of laches and the action should be dismissed on this ground alone.

In the circumstances, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL