

**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 Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A (Writ) Application No. 150/2017**

Arumugam Tamil Chelvan,  
Nagasthenna Estate,  
Nawalapitiya.

**PETITIONER**

Vs.

1. A. Jagath D. Dias,  
Director General of Pensions,  
Department of Pensions  
The Secretariat,  
Maligawatta, Colombo 10.
2. J.J. Ratnasiri,  
Secretary.
3. B.P.P.S. Abeygunaratne,  
Additional Secretary.

Ministry of Public Administration and  
Home Affairs,  
Independence Square, Colombo 7.

**RESPONDENTS**

**Before:** P. Padman Surasena, J / President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Prinath Fernando for the Petitioner

Ms. Maithri Amerasinghe Jayatilake, State Counsel for the Respondents

**Written Submissions:** Tendered on behalf of the Petitioner on 12<sup>th</sup> July 2018

Tendered on behalf of the Respondents on 12<sup>th</sup> September 2018

**Decided on:** 12<sup>th</sup> December 2018

**Arjuna Obeyesekere, J.**

When this application was taken up for argument on 18<sup>th</sup> June 2018, the learned Counsel appearing for both parties moved that this Court pronounce judgment on the written submissions that would be tendered on behalf of the parties.

The Petitioner has filed this application seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the refusal by the 1<sup>st</sup> Respondent Director General of Pensions to register the Petitioner under the Widowers and Orphans Pension Act and to pay the pension due to him, as reflected in the documents annexed to the petition, marked 'P19'<sup>1</sup>, 'P21'<sup>2</sup>, 'P22'<sup>3</sup> and 'P23'<sup>4</sup>;

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<sup>1</sup> 'P19' is a letter dated 18<sup>th</sup> January 2010 sent by the 1<sup>st</sup> Respondent to the Zonal Director of Education, Dehiowita.

<sup>2</sup> 'P21' is a letter dated 12<sup>th</sup> May 2010 sent by the 1<sup>st</sup> Respondent to the Zonal Director of Education, Dehiowita.

- (b) A Writ of Mandamus directing the Respondents to register the Petitioner under the Widowers and Orphans Pension Act and to pay his pension and gratuity.

The facts of this matter very briefly are as follows:

The Petitioner's wife, S.L.Regina<sup>5</sup> (Regina) was serving in the Nagasthenna Estate School as a teacher when the said school was taken over by the Government<sup>6</sup> on 28<sup>th</sup> June 1977. Even though Regina had continued to serve as a teacher at the said school after it was taken over by the Government, she had not been issued with a formal letter of appointment by the Government at the time of her death on 18<sup>th</sup> June 1989<sup>7</sup>.

After her death, the Petitioner had made representations to the Kegalle District Education Office that the gratuity payable to Regina and the widowers pension to which the Petitioner is entitled to, be paid to the Petitioner. The Petitioner's claim was based on the provisions of the Widowers and Orphans Pension Act No. 24 of 1983, as amended (W&OP Act).

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<sup>3</sup> 'P22' is a letter dated 11<sup>th</sup> October 2010 sent by the 1<sup>st</sup> Respondent to the Secretary, Ministry of Public Administration and Home Affairs.

<sup>4</sup> 'P23' is a letter dated 19<sup>th</sup> October 2011 sent by the 1<sup>st</sup> Respondent to the Secretary, Ministry of Public Administration and Home Affairs.

<sup>5</sup> The marriage certificate of the Petitioner and Regina has been annexed to the petition, marked 'P1'. This Court observes that the name of the Petitioner is given as 'Nadesan Arumugam', which is different to the name given in the petition.

<sup>6</sup> This is borne out by the Circular dated 7<sup>th</sup> June 1977, annexed to the petition marked 'P5' issued by the Provincial Director of Education, Kegalle.

<sup>7</sup> The death certificate of Regina has been annexed to the petition, marked 'P3'.

In terms of Section 2(1) of the W&OP Act, there shall be a pension scheme for the payment of pension to widowers and orphans of female public officers who are entitled to the payment of pension under the Minutes of Pension. Section 3 of the said Act specifies that a monthly deduction shall be made from the salary of the officer on account of the pension fund, which shall be remitted to the Consolidated Fund. Section 9 of the Act specifies that the widowers and orphans of officers who were subject to deductions under this Act shall be entitled to a pension under this Act.

It appears from the several documents annexed to the petition that the Petitioner had been pushed from pillar to post over the years and that even by 2007, no finality had been reached with regard to the payment of a pension to the Petitioner, partly due to a formal letter of appointment not having been issued to Regina.

This issue was finally resolved when the Director of Education Sabaragamuwa Province issued Regina a letter of appointment dated 6<sup>th</sup> November 2008, annexed to the petition marked 'P4'. The title and the first two paragraphs of 'P4' reads as follows:

"රජයට පවරා ගන්නා ලද වතු පාසැල් වල ගුරුවරුන්ට රජය යටතේ පත්වීම දීම

ඔබට කැ/දෙති/නාගස්තැන්න දෙමළ විදුහලට ලබා දී ඇති පත්වීම 1977.06.26 දින සිට ක්‍රියාත්මක වන පරිදි ස්ථිර කරන්නට යෙදුන බව මෙයින් දැන්වමි.

මෙම තනතුර ස්ථිර හා විශ්‍රාම වැටුප් සහිතය."

Thus, there is no doubt that Regina was a Government employee at the time of her death and that Regina was entitled to a pension. It is therefore clear that upon the death of Regina, the Petitioner was eligible for the payment of a pension in terms of the W&OP Act. It is however admitted by the parties that no deductions were made from the salary of Regina on account of the pension, as required by the W&OP Act, as she passed away long before her letter of appointment conferring her the right to a pension was issued.

In February 2009, the Department of Pensions had issued Pension Circular No. 6/2009<sup>8</sup>, permitting those who were entitled to a pension but who had not been registered under the W&OP Act, to do so by 30<sup>th</sup> June 2009. This Circular contained provisions relating to the registration of those who had passed away. The following provisions of the said Circular are relevant to this application and hence, are re-produced below:

“1983.08.01 දිනට ප්‍රථම විශ්‍රාම වැටුප් සහිත තනතුරකට පත් කරනු ලැබූ වදින සේවයේ නියුක්තව සිටි රාජ්‍ය නිලධාරීන්ගේ හට වැන්දඹු පුරුෂ අනන්දරු විශ්‍රාම වැටුප් ක්‍රමයට ඇතුළත්වීමේ මනාපය පළකිරීමේ කාලය විශ්‍රාම වැටුප් චක්‍රලේඛ 8/2007 මගින් 2007.12.31 දක්වා දිරිසකර තිබුණි.

එහෙත් එම කාලය තුළ මනාපය පළකිරීමට නොහැකි වූ නිලධාරීන් සඳහා 2009.06.30 දින දක්වා මනාපය පළකිරීමේ කාලය 2009.01.23 දින නිකුත් කර ඇති අති විශේෂ ගැසට් නිවේදනය හා 13/2001 (IV) දරණ රාජ්‍ය පරිපාලන චක්‍රලේඛය මගින් දිරිස කර ඇති බව මෙයින් දන්වමි.

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<sup>8</sup> The said Circular is dated 13<sup>th</sup> February 2009 and has been annexed to the petition marked 'P15'.

එකී ව්‍යුත්පන්නයේ සඳහන් නියමයන් හා රාජ්‍ය පරිපාලන ව්‍යුත්පන්න 13/2001 (IV) හි සඳහන් නියමයන් අතරින් පහත සඳහන් වූ සංශෝධනයන්ට යටත්ව මෙම ව්‍යුත්පන්නය නිකුත් කරනු ලැබේ.

III තවද නිලධාරියන් මිය ගොස් ඇත්නම් අදාළ දායක මුදල සහ පොළීය ප්‍රදානයෙන් එකවර අඩු කළ යුතු බවත් නිලධාරියා සේවයේ යෙදී සිටින්නේ නම් ඇය විශ්‍රාම යාමට පෙර මුළු දායක මුදල සහ පොළීය අඩු කළ යුතු බවත් නියම කරමි

පහත සඳහන් තැනැත්තන්ට මෙම මනාපය පල කල හැක.

3. මනාපය පල කිරීමට දී ඇති අවසාන දිනයට පෙර මියගොස් ඇති නිලධාරියන් (මෙහිදී වැන්නදු පුරුෂයා හෝ අනන්දරු වත් හෝ අනන්දරුවන්ගේ කාරකරුවන් ලවා පොදු 86 “අ” ආකෘති පත්‍රය අත්සන් කළ හැකිය).

It was therefore open to the Petitioner to have Regina registered under the W&OP Act. The Petitioner, acting in terms of this Circular ‘P15’, had submitted the relevant documents required in terms thereof to the Zonal Education Director, Dehiowita who in turn had submitted the said document to the Department of Pensions.<sup>9</sup>

However, the Department of Pensions, by letter dated 18<sup>th</sup> January 2010 sent to the Zonal Director of Education, annexed to the petition marked ‘P19’ had refused to register Regina under the Widowers and Orphan Pension Scheme for the following reasons:

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<sup>9</sup> Vide letters dated 12<sup>th</sup> June 2009 and 26<sup>th</sup> August 2009, sent by the Zonal Director of Education, Dehiowita, annexed to the petition marked ‘P17’ and ‘P18’ respectively.

“මයඟිය එස්. එල්. රෙපිනා මිය වැන්නදුමු පුරුෂ හා අනන්දරු විශ්‍රාම වැටුප් ක්‍රමයෙහි ලියාපදිංචියේදී පහත සඳහන් ගැටළු මතුවී තිබේ.

1. විධිමත් ස්ථිර විශ්‍රාම වැටුප් සහිත පත්වීමක් නොතිබීම.

1989 දී මයඟිය රෙපිනා මිය වෙනුවෙන් අවිධිමත් විශ්‍රාම වැටුප් සහිත පත්වීමක් ඇය මියගොස් වසර ගණනාවකට පසු 2008 වසරේදී නිකුත් කර ඇති බව පෙනේ. එබැවින් පත්වීමේ ස්වාභාවය අනුව ඇය රාජකාරී කළ බවක් සඳහන් නොවේ.

2. ඇය 1983.08.01 දින සිට ක්‍රියාත්මක වන වැන්නදුමු පුරුෂ හා අනන්දරු විශ්‍රාම වැටුප් ක්‍රමයට දායකත්වය නොලැබූ තැනැත්තියකි. ඒ නිසාම සේවා කාලය තුළ දායක මුදල් අයවීමක්ද සිදුවී නැත. මනාපය පළ කිරීම යටතේ මිය යාමෙන් පසු ස්වාමි පුරුෂයා විසින් මනාපය පළ කර ඇති බව පෙනේ.”

This Court observes that the Department of Pensions has not given any specific reason as to why they claim the letter of appointment was irregular.

The response of the Zonal Director of Education to ‘P19’ is at ‘P20’<sup>10</sup>. In this letter, the Zonal Director has confirmed that Regina served as a teacher at the said school from 27<sup>th</sup> June 1977 until her death and that according to the records maintained at the Kegalle and Dehiovita Zonal Education Office, Regina had been paid her salary for such period. It appears from several letters written by the Department of Pensions thereafter that the Department of Pensions had continued to take up the position that the letter of appointment issued to Regina in 2008 was irregular and that no payments can be made to the Petitioner as Regina did not hold a pensionable post at the time of her death. This Court must

<sup>10</sup> ‘P20’ is dated 26<sup>th</sup> April 2010.

observe that the delay in issuing the letter of appointment to Regina cannot be attributed to her and that, had Regina been issued with a letter of appointment by the Government soon after the takeover of the school, the issue before this Court would not have arisen.

Be that as it may, the Department of Pensions by letter dated 11<sup>th</sup> October 2010 annexed to the petition marked 'P22' had sought the instructions of the Secretary, Ministry of Public Administration and Home Affairs, in this regard. By his letter dated 11<sup>th</sup> February 2011, annexed to the petition marked 'P24', the Secretary, Ministry of Public Administration and Home Affairs had responded as follows:

"02. රජයට පවරා ගත් වතු පාසල්වල සේවය කල මූලික සුදුසුකම් සපුරා නොමැති ගුරුවරුන් සඳහා විශ්‍රාම වැටුප් සහිත ස්ථිර විධිමත් පත්වීම් ලිපි ලබා දීම සඳහා අමාත්‍ය මණ්ඩල තීරණ හා චක්‍රලේඛ 1992 හා 1999 වර්ෂ වලදී නිකුත් කලද වසර 10කට ආසන්න කාලයක් ගතවීමෙන් පසු කැ/දෙති/නාගස්තැන්න දෙමල විද්‍යාලයේ සේවය කරමින් සිටියදී මිය ගිය එස්. එල්. රෙජිනා මහත්මිය වෙත 1977.06.26 දින සිට බල පැවැත්වෙන පරිදි විධිමත් පත්වීම් ලිපියක් 2008.11.16 වන දිනැතිව නිකුත් කර ඇත. මේ වන විට ඇය මිය ගොස් වසර 20 කට ආසන්න කාලයක් ගතවී ඇති අතර නියමිත කාලය තුළ නිලධාරිණියට ස්ථිර විශ්‍රාම වැටුප් සහිත පත්වීම් ලිපිය නිකුත් නොකිරීම හේතුවෙන් ඇයට හිමි වැන්දඹු අනන්දරු විශ්‍රාම වැටුප් ලබා දීම පිළිබඳ ගැටළු මතුව ඇති බව පෙනී යයි.

03. ඒ අනුව,

- ස්ථිර විශ්‍රාම වැටුප් සහිත පත්වීම් ලිපිය නිකුත් කිරීම ප්‍රමාද වීම මියගිය නිලධාරිණියගේ පාලනයෙන් තොරව සිදුවුවක් බව පෙනී යන බැවින් හා
- අදාළ නිලධාරිණියගේ ලිපි ගොනු අනුව සේවා කාලය තුළ සේවා අකාර්යක්ෂමතාවයන් සිදුව ඇති බවට වාර්තා නොවන නිසාත්



- නිලධාරියාගේ වැන්දඹු පුරුෂයා විසින් වැන්දඹු පුරුෂ අනන්දරු විශ්‍රාම වැටුප් ක්‍රමයට මනාපය පල කිරීමට ලබා දී ඇති කාල සීමාව තුළදී මනාපය පල කර ඇත්නම් එම අරමුදලට දායක මුදල් අයකර ගැනීමට යටත්ව
- ඇයගේ සිටීර විශ්‍රාම වැටුප් සහිත සේවා කාලයට පමණක් බලපැවැත්වෙන පරිදි ඇය මිය ගිය දින සිට වැන්දඹු පුරුෂ අනන්දරු විශ්‍රාම වැටුප් පමණක් ගෙවීම මෙයින් අනුමත කරමි.”

Having sought and received instructions from the Ministry of Public Administration and Home Affairs, one would have expected the Department of Pensions to have complied with the said instructions. Unfortunately this was not to be. It is a matter for regret that the Department of Pensions refused to follow the said instructions given by the Secretary, Ministry of Public Administration and Home Affairs, as borne out by letter dated 19<sup>th</sup> October 2011, annexed to the petition marked 'P23'. As no relief was forthcoming, the Petitioner had continued to make representations on this matter but not having had a favourable response, has filed this application seeking the intervention of this Court.

Taking into consideration the above factual circumstances, this Court is of the view that the refusal by the 1<sup>st</sup> Respondent Director General of Pensions to comply with provisions of the W&OP Act was unreasonable. Thus, when this case was mentioned on 25<sup>th</sup> September 2018 for judgment, this Court requested the learned State Counsel to clarify whether Regina would have been entitled to a pension had she been issued with the letter of appointment while she was alive and to inform this Court the reasons for the delay in issuing the letter of appointment, inspite of a decision of the Cabinet of Ministers referred to in the

Statement of Objections filed on behalf of the Respondents. The learned State Counsel, having obtained instructions, informed this Court on 23<sup>rd</sup> November 2018 that the Respondents are prepared to pay the Petitioner the pension that he is entitled to in terms of the W&OP Act, together with the gratuity payable to Regina, with effect from a date that this Court may decide, a course of action with which the learned Counsel for the Petitioner was agreeable.

It appears to this Court that the predicament faced by the Petitioner has arisen as a result of bureaucratic lethargy and inefficiency that has taken place at various Government Departments, during the last 28 years. It also appears from the letters written by the Department of Pension that its decision was influenced by a completely irrelevant fact, which is that the pension would have to be paid from 1989<sup>11</sup>.

In the above circumstances, this Court proceeds to issue a Writ of Certiorari quashing the decision of the 1<sup>st</sup> Respondent, Director General of Pensions contained in documents marked 'P19', 'P21' & 'P23' refusing to register Regina under the W&OP Act and refusing to pay the Petitioner the benefits due to a widower under the W&OP Act.

This Court issues a Writ of Mandamus on the 1<sup>st</sup> Respondent to pay the Petitioner all sums of money that the Petitioner is entitled to under and in terms of the W&OP Act, in accordance with the provisions of the said Act, after deducting the

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<sup>11</sup>This is borne out by the letter marked 'P23'- "එස්. එල්. ටෙම්නා මහත්මිය 1989.06.18 දින මයකොස් ඇති බැවින් එදින සිට වැන්දඹු පුරුෂ අනන්දරු විශ්‍රාම වැටුප් ගෙවීමට කටයුතු කළතොත් එතර 22 ක පමණ වූ කාලසීමාවක් කැකා හිස වැන්දඹු අනන්දරු විශ්‍රාම වැටුප් ගෙවිය යුතු වන අතර, ඒ කැකා විශාල මුදලක් රජයට දැරීමට සිදුවේ."

contributions that Regina ought to have made under the said Act, with effect from 11<sup>th</sup> February 2011 which is the date on which the Secretary, Ministry of Public Administration and Home Affairs instructed the 1<sup>st</sup> Respondent to make the payment. This Court is of the view that payment from the said date is reasonable, taking into consideration all the circumstances of this case. This Court further directs that only the period that Regina served under the Government should be taken into consideration when calculating the period of service for purposes of pension.

This Court makes no order with regard to costs.

**Judge of the Court of Appeal**

**P. Padman Surasena, J/ President of the Court of Appeal**

I agree.

**President of the Court of Appeal**