

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

K.L. Lakshman,  
No.61/1,  
Mangalasiripura,  
Ballapitiya,  
Horana.  
Petitioner

**CASE NO: CA/WRIT/150/2015**

Vs.

1. Panadura Pradeshiya Sabha,  
Wadduwa.
  2. H.A. Jayalatha,  
Secretary,  
Pananura Pradeshiya Sabha,  
Wadduwa.
  3. Chandrani Samarakoon,  
Commissioner of Local  
Government (Western Province),  
No. 32, Sir Marcus Fernando  
Mawatha,  
Colombo 7.
  4. Director General of Pensions,  
Department of Pensions,  
Maligawatte,  
Colombo 10.
- Respondents

Before: Mahinda Samayawardhena, J.  
Counsel: Uditha Egalahewa, P.C., with Ranga  
Dayananda for the Petitioner.  
S. Balapatabendi, Senior D.S.G., for the  
Respondents.  
Decided on: 02.05.2019

Samayawardhena, J.

The petitioner filed this application against the four respondents seeking:

- a) To issue a writ of mandamus directing the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents to submit the necessary documents to the 4<sup>th</sup> respondent enabling the petitioner to obtain his due pension; and
- b) To issue a writ of mandamus directing one or more or all of respondents to take necessary steps to pay his pension in terms of Pension Minutes and the relevant Circulars issued by the State.

I must say at the outset that the reliefs prayed for by the petitioner are vague, and on that ground alone, the application of the petitioner is liable to be dismissed.

It is well settled law that mandamus lies to compel a statutory duty, which the petitioner has a legal right to demand. In order for the Court to consider the alleged statutory duty, the petitioner shall in unambiguous terms inform the Court what the said statutory duty is, which the respondent has failed to perform.

It is quite clear from the documents marked 2RA-2RE tendered with the statement of objections of the 2<sup>nd</sup> respondent that the 2<sup>nd</sup> respondent being the Chief Administrative Officer of the 1<sup>st</sup> respondent Pradeshiya Sabha has sent with great enthusiasm all the required documents to the 4<sup>th</sup> respondent to see that the petitioner is paid the pension. It is very unfair on the part of the petitioner to make allegations even obliquely against the 1<sup>st</sup> and 2<sup>nd</sup> respondents as they have been all out to help the petitioner to secure the pension, and even explanations have been called from the 2<sup>nd</sup> respondent by the 3<sup>rd</sup> respondent in unfairly helping the petitioner in this regard- vide 3R5. In that backdrop, the petitioner shall specify any other “necessary documents” which he thinks the 2<sup>nd</sup> respondent has withheld preventing the 4<sup>th</sup> respondent from giving him the pension. The first relief is not only vague, but also baseless.

Secondly, the petitioner wants Court to compel by mandamus one or more or all of the respondents to take necessary steps to pay his pension in terms of Pension Minutes and the relevant Circulars issued by the State.

Here again he wants the respondents to take necessary steps to pay his pension. He is not certain who can pay his pension. According to him, the Panadura Pradeshiya Sabha or its Secretary or Commissioner of Local Government can pay his pension! In my view, the petitioner has not filed this application with seriousness. He must understand that writ is a discretionary remedy, and the conduct of the petitioner is intensely relevant in deciding the matter.

The petitioner’s services for book binding have been taken by the Pradeshiya Sabha on “piece rate basis” for the first time from

01.08.1998 when he was nearly 45 years of age—44 years and 9 months to be exact-*vide* P1A and P1B. The period during which he worked on piece rate basis he has been paid Rs.15/= allowance per book-*vide* P1A. This period cannot be added to the pensionable service-*vide* 2RC.

Thereafter, at the age of 48, he has been appointed as a casual peon in the library from 28.12.2001 on daily pay basis-*vide* P2. Then he has been appointed to the permanent post of book-binder effective from 01.07.2005 by the appointment letter marked P4. It has been stated in P4 that the said appointment is pensionable. He has thereafter retired from service on 23.10.2013 at the age of 60-*vide* P7.

The petitioner in paragraphs 11 and 12 of the petition states as follows:

*11. The 4<sup>th</sup> respondent requested the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent to submit additional information in respect of recruitment of the petitioner who was over 45 years of age when he was recruited. The petitioner states that the said recruitment of the petitioner was not in violation of PA Circular 23/94 as there was a decision by the 1<sup>st</sup> respondent. A copy of the letter dated 31<sup>st</sup> October 2013 is annexed hereto marked P7A and plead part and parcel hereof.*

*12. The petitioner states that the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents have failed and/or neglected to send the additional information requested by the 4<sup>th</sup> respondent and thus, the petitioner is denied of his due pension rights.*

P7A is a letter sent by the 4<sup>th</sup> respondent to the 2<sup>nd</sup> respondent asking the latter to send the Cabinet Decision allowing the petitioner who was recruited to the government service after 45 years of age to pay the pension.

Public Administration Circular 23/94 referred to in paragraph 11 of the petition says that the maximum age for recruitment to the Government Service is 45 years- vide 3R3.

P7A reads as follows:

උක්ත කරුණට අදාලව ඔබගේ සමාංක හා 2013.10.22 දිනැති අයදුම්පත හා බැඳේ.

02. අදාල අයදුම්පත්‍රයට අනුව ඉහත නිලධාරියාට අනියම් තනතුර ප්‍රදානය කර ඇත්තේ ද ස්ථිර විශ්‍රාම වැටුප් සහිත තනතුර ප්‍රදානය කර ඇත්තේද ඇයට වහස අවු.45 ට පසුව වේ. නමුත් රාජ්‍ය පරිපාලන චක්‍රලේඛ 23/94 අනුව රාජ්‍ය සේවයට බඳවා ගැනීමේ උපරිම වයස් සීමාව අවු. 45 බව සඳහන්ව ඇත.

03. අදාල ගැටළුව සම්බන්ධව රාජ්‍ය පරිපාලන ආයතන අධ්‍යක්ෂ ජනරාල්ගෙන් විමසීමක් කරන ලද අතර එහිදී රා.ප.ව. 23/94 ට පරිබාහිරව කටයුතු කිරීම සඳහා අදාල අමාත්‍යාංශයේ හෝ දෙපාර්තමේන්තුව විසින් ප්‍රතිපත්තිමය තීරණය (අමාත්‍ය මණ්ඩල තීරණය) ගෙන තිබිය යුතු බවත් එම තීරණය සම්බන්ධයෙන් ඔබගෙන් විමසා පිළිතුරු ලබා ගන්නා ලෙසත් උපදෙස් ලැබී ඇත.

04. ඒ අනුව ඔබගේ අමාත්‍යාංශය/දෙපාර්තමේන්තුව ලබා ගත් ප්‍රතිපත්තිමය තීරණය නොපමාව ලබා දීමට කටයුතු කරන ලෙස කාරුණිකව දන්වමි.

In response to this letter the 2<sup>nd</sup> respondent (with a copy of that letter) has written to the 3<sup>rd</sup> respondent seeking recommendation and approval to inform the 4<sup>th</sup> respondent in order to facilitate the payment of pension to the petitioner.

This has been replied by the 3<sup>rd</sup> respondent by 2RB in the following manner:

උක්ත කරුණ සම්බන්ධයෙන් ඔබේ සමාංක හා 2013.11.15 දිනැති ලිපිය හා බැඳේ.

02. මේ අයුරින්ම වයස අවු. 45 ඉක්මවීම මත සේවක අර්ථසාධක අරමුදල් පදනම යටතේ ස්ථිර කර ඇති බස්නාහිර පළාතේ පළාත් පාලන ආයතනවල සේවය කරන සේවකයින් 52 දෙනෙකුහට ස්ථිර විශ්‍රාම වැටුප් සහිත තත්වය ලබා දීම සඳහා අමාත්‍ය මණ්ඩල සන්දේශයක් ඉදිරිපත් කර ඇති අතර ඒ සඳහා අනුමැතිය ලබා දිය නොහැකි බව පළාත් පාලන සභ පළාත් සභා අමාත්‍යාංශයේ ලේකම්ගේ අංක පීඑල්/7/4/80 හා 2012.03.15 දිනැතිව මටද පිටපත් සහිතව ආණ්ඩුකාර ලේකම් (බ.ප.) වෙත යොමු කර ඇති ලිපියෙන් දන්වා ඇත.

03. ඒ අනුව විශ්‍රාම වැටුප් අධ්‍යක්ෂගේ අංක විවැ/ලිප/පොදු 55-2013 හා 2013.10.31 දිනැති ලිපියෙන් විමසා ඇති පරිදි රා.ප.ව. 23/94ට පරිබාහිරව කටයුතු කිරීම සඳහා මෙම දෙපාර්තමේන්තුව විසින් ප්‍රතිපත්තිමය තීරණයක් ලබා ගෙන නොමැති බව කාරුණිකව දන්වමි.

Then it is clear that neither a cabinet approval nor a policy decision has been taken to pay pension for those who have been recruited to the Government Service beyond the age of 45 years.

Merely because the appointment letter P4 states that the appointment is pensionable, unless the petitioner satisfies the other requirements stipulated by the Pension Minutes and the Circulars, he cannot demand pension on the ground that the appointment, in accordance with the appointment letter, is pensionable. One such requirement is ten-year service. Another is recruitment to the government service before 45 years of age. There may be other requirements. The petitioner has at least failed to satisfy the second requirement mentioned above.

I might add that even if the petitioner has fulfilled all the requirements, still, “A public servant has no absolute right or legal right to a pension enforceable by Mandamus.” (*Wilson v.*

*Ceylon Electricity Board [1997] 3 Sri LR 174, Dheerasena v. Post Master [2008] 1 Sri LR 349)*

Application is dismissed without costs.

Judge of the Court of Appeal