

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

Rajapakse Mudiyanse
Somaratne,
No. 48,
Jayathi Gramaya,
Saliyapura,
Anuradhapura.
And 2 Others
Petitioners

CASE NO: CA/WRIT/395/2015

Vs.

General Manager of Railways,
Railways Department,
General Manager's Office,
P.O. Box 355,
Olcott Mawatha,
Colombo 10.
And 6 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Thishya Weragoda for the Petitioner.
Manohara Jayasinghe, S.C.C., for the
Respondents.

Decided on: 28.05.2019

Samayawardhena, J.

The petitioners are bamboo gate operators at unprotected railway crossings commenced work in that capacity from early 1990's for a monthly allowance of Rs.1000/= which was increased up to Rs.3000/=. Thereafter, as seen from P5(a)-(l), they were given substitute appointments (ආදේශක පත්වීම්) from 01.07.2005 for a daily allowance in a sum of Rs.262/= or Rs.287/=.

They say that by Public Administration Circular marked P2 the Government has decided to confirm the temporary, casual, substitute and the like employees of labour grades etc. in public service in their posts effective from 01.10.2001; and then by Public Administration Circular marked P3 the Government has made a similar decision to be effective from 01.07.2005; and then by Public Administration Circular marked P4 it was made to give effect to that decision from 01.11.2006; but they were never made permanent in their posts according to those Circulars.

Thereafter at last by Public Administration Circular marked P6, they have been made permanent effective from 24.10.2014 subject to a probationary period of three years. These appointments are pensionable as seen from the appointment letters.

In terms of the applicable Pension Minutes, the petitioners in paragraph 23 of the petition say that, they are mandatorily required to complete ten years of permanent employment to be eligible to receive a pension and as such they would not be

receiving a pension upon their retirement since they would be retiring before the completion of the requisite period of ten years.

The petitioners in their petition specifically state that they seek relief from Court “*for the sole purpose of securing their pension entitlement*” and nothing else.

To achieve that objective, the petitioners seek to compel the respondents by way of writ of Mandamus to grant them permanent appointments from the date mentioned in Circulars marked P2 or P3 or P4 so that they have 10 year permanent service in order to become eligible for the pension.

In this regard I must straightaway say that assuming they are public servants governed by the Establishment Code, “*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*)

It is well settled law that Mandamus lies to compel the performance of a statutory duty, which the petitioner has a legal right to demand. In the facts and circumstances of this case, neither of them seem to exist. There is no statutory duty on the part of the respondents to ante-date the petitioners’ appointments. Nor do the petitioners have a legal right to demand such a thing.

There is a special procedure to be followed in ante-dating appointments and it cannot be done in the manner the petitioners expect it to be done—vide *inter alia* section 1:10 of Chapter II of the Establishment Code.

The petitioners further state that they hold a pensionable position and thus have a legitimate expectation of receiving a pension. This argument lacks merit. The fact that the post is pensionable does not automatically make them entitled to receive the pension. He needs to fulfil other requirements such as 10 year service to become so eligible.

Application of the petitioners is dismissed, but without costs.

Before I part with this Judgment I must, subject to correction, make the following observation. The petitioners have filed this application on the premise that, according to the applicable Pension Minutes, they are mandatorily required to complete ten years of permanent employment to be eligible to receive a pension. The said Pension Minutes appears to have been amended from time to time by various Public Administration and Pension Department Circulars. For instance, it appears to me (subject to correction) that, according to Pension Department Circular No.9/2004 dated 30.06.2004 read with Pension Department Circular No.2/2013 dated 18.04.2013, non-pensionable service, such as, daily paid, casual, substitute, temporary, training can also be calculated for the purpose of pension provided the employee has been recruited to the service before 45 years of age. These petitioners have been recruited before 45 years of age.

Hence, the said dismissal of the application shall not prejudice the right of the petitioners to make a suitable application to the proper authorities, if so advised.

Judge of the Court of Appeal