

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

P.D. Lalith,
“Wendesiwatta”,
Welikala,
Pokunuwita.
Petitioner

CASE NO: CA/WRIT/83/2015

Vs.

The Director of Pensions,
Department of Pensions,
Maligawatta,
Colombo 10.
And 11 Others
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Luxman Amarasinghe for the Petitioner.
Nayomi Kahavita, S.C., for the Respondents.
Decided on: 03.06.2019

Samayawardhena, J.

The petitioner filed this application seeking to quash P24 by certiorari and compel the respondents by mandamus to absorb the petitioner for Technical Service or Para Medical Salary Group and pay the arrears of salary and pension to the petitioner from the date of appointment in 1993.

The respondents jointly filed objections to this application, but did not file written submissions at the end of the argument.

Whilst the learned counsel for the petitioner placed reliance on the Judgment of this Court in CA/Writ/407/2009, the learned State Counsel placed reliance on the Judgment of this Court in CA/Writ/133/2015 (against which a leave to appeal application has been filed before the Supreme Court). However a copy of the latter Judgment has not been tendered for perusal of the Court.

The petitioner is a retired public servant whose appointment was the Driver Overseer to serve in the Anti-Malaria Campaign under the Ministry of Health. (vide P1) According to the petitioner the cadre for that special post was about 5 for whole Sri Lanka, and they were assigned unique duties (vide P3 and P6) which are not handled and expected from a public servant appointed as a Driver, whichever the Grade may be.

The petitioner's complaint is that according to the Public Administration Circular No.96 marked P10, although Driver Overseer is a separate Grade having a separate salary structure, he was not paid that salary after he was absorbed to the Provincial Public Service of the Sabaragamuwa Provincial Council.

In the subsequent circulars issued regarding Salaries and Cadres, the Post/Grade of Driver Overseer has been omitted. Whether it was deliberate or accidental is not clear. Sometimes as there were handful of public servants of that Post, the authorities might have accidentally omitted to accommodate them in the subsequent circulars. If it was deliberate, there shall be some decision taken to annul that Post and at least absorbing them into a different category/post. There is nothing on record, and the matter is in limbo.

In this regard, the petitioner has, by a spate of letters tendered with the petition, complained to the authorities to rectify this salary anomaly without success.

However the Director Establishment has attempted to rectify this anomaly but could not pursue until the end due to lack of assistance on the part of the Health Ministry. (vide P18, P19)

By P23, the Provincial Director of Health Services of Sabaragamuwa, having *inter alia* considered the duties of the Driver Overseer has recommended to the Secretary to the Provincial Health Ministry of Sabaragamuwa to calculate the salary of the petitioner in terms of the salary code relevant to the Sri Lanka Technical Service.

The Governor of the Sabaragamuwa Province by P37 has directed the Secretary of the Chief Minister of the Sabaragamuwa Province to decide the appropriate salary scale to the post of Driver Overseer and pay the salaries accordingly.

Thereafter this matter has been referred to the National Salaries and Cadres Commission and the Secretary thereof by letter marked P24 has informed the Chief Secretary of the

Sabaragamuwa Provincial Council that the payment of salary according to the salary scale for Driver Grade 1 to the petitioner at the time of retirement is correct, and no different salary scale can be recommended. P24 does not clarify why there was an unexplained discontinuation of the special salary scale identified for the Driver Overseers by Public Administration Circular marked P10. They in my view owe an explanation both to the petitioner and to the Court for such deviation. This has not been done.

Another Bench of this Court, with the agreement of a different State Counsel, in CA/Writ/ 407/2009 has placed another Driver Overseer similarly circumstanced, in the salary scale of TB 3-4-4 of the Sri Lanka Technical Service for the calculation of the pension. Notwithstanding that settlement was personal to that petitioner and recorded not to be regarded as a precedent in future cases, I see no reason not to come to the same conclusion in the unique facts and circumstances of a very few (according to the petitioner about 5 for the whole island) public servants appointed as Driver Overseers who have rendered a yeoman service in difficult circumstances in the past.

For the aforesaid reasons, I quash P24 decision and direct the respondents by mandamus to place the petitioner in the salary scale of TB 3-4-4 of the Sri Lanka Technical Service for the calculation of the salary and pension and pay the arrears accordingly. No costs.

Judge of the Court of Appeal