

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

In the matter of an application for a mandate/order in the nature of writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ajith Kumara Ekanayake
C. Ekanayake Mawatha
Walauwa Watte
Ganegama South
Baddegama

CASE NO: CA/WRIT/331/2019

**AAT Appeal No. AAT/162/2017
(NPC)**

Petitioner

Vs.

1. National Police Commission
Block No. 9
BMICH Premises
Buddhaloka Mawatha
Colombo 07
2. K. W. E. Karaliyadda (Chairman)
3. Savithri D. Wijesekara (Member)
4. Y. L. M. Savaheer (Member)
5. D. T. Kollure (Member)
6. Gamini Nawarthne (Member)
7. Ashoka Wijethilaka (Member)
8. G. Jayakumar (Member)
9. Nishantha A. Weerasinghe (Secretary)
All of
Block No 9
BMICH Premises
Buddhaloka Mawatha
Colombo 07
(The members of the National Police
Commission)
10. Inspector General of Police
Police Headquarters
Colombo 01
11. The Administrative Appeals Tribunal
No 35, Silva Lane
Rajagiriya

12. N. E. Dissanayake (Chairman)
13. A. Gnanathan, PC. (Member)
14. G. P. Abeykeerthi (Member)
All of
No. 35, Silva Lane
Rajagiriya
(Members of the Administrative Appeals
Tribunal)
15. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondents

Before: M. T. M. Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Mahinda Nanayakkara with Aruna Jayatilake and
Ms. K.S.K. Mendis for the party sought to be added as the substituted
Petitioners
Parinda Ranasinghe, PC (DSG) for the Respondents

Written submissions tendered:

on 27.10.2021 by the party sought to be added as the substituted Petitioners

on 28.10.2021 by the 1st - 10th and 15th Respondents

Argued by way of written submissions

Decided on: 14.12.2021.

S. U. B. Karalliyadde, J.

This Order pertains as to whether the Application of the widow and the child of the Petitioner to the writ application to be substituted as the substituted Petitioners after the demise of the Petitioner should be allowed. The Petitioner instituted this action on 02.08.2019 seeking the substantive reliefs *inter-alia*, to issue a mandate in the nature of writ of Certiorari to quash the Order dated 28.01.2019 of the Administrative Appeals Tribunal (AAT) directing the Respondents to reinstate the Petitioner in the Police service on a prospective date and the period

which the Petitioner was out of the service to be treated as a period of no-pay, to issue a mandate in the nature of writ of Mandamus directing the 11th -14th Respondents (the AAT and its members) to reinstate the Petitioner with retrospective effect from 02.07.2003 and a declaration that the Petitioner is entitled to all back wages, salary increments and increases and due promotions with retrospective effect from 02.07.2003. When the Order of this Court as whether the formal notices of the writ application should be issued to the Respondents, the Petitioner passed away on 10.12.2019. Thereafter, the widow and the child of the Petitioner made an application to the Court seeking to substitute them in the place of the deceased Petitioner by amending the caption.

The learned Additional Solicitor General appearing for the Respondents objected to that application on the basis that in writ applications, there is no provision in law for substitution in the room of a deceased Petitioner. To strengthen that argument, he cited the case of *T. R. Rathnasiri vs. D. G. of Customs and Other (C.A. Writ 487/2015) C.A. Minute dated 11.01.2018*. In that case His Lordship Justice Dehideniya relied on Rule 5 (4) in Part IV of the Court of Appeal (Appellate Procedure) Rules 1990, which permits the substitution of Respondent but not the Petitioner in applications made under Articles 140 of the Constitution has held that substitution in the room of a deceased Petitioner is not permissible. Subsequent to that decision, the Court of Appeal (Appellate) Procedure Rules, 1990 has been amended by the extraordinary Gazette Notification No. 2091/58 dated 04.10.2018 and Part VI has been added as the Court of Appeal (Appellate Procedure) Rules of 2018. In terms of Rule 1 in Part VI, every Petitioner who files any application under Articles 138, 140 and 141 of the Constitution to the Court of Appeal should file together with such application, a memorandum as set out in the schedule of these rules nominating at least one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Applicant's death and/or change of status in cases where the

application and/ or appeal survives the death and/ or change of status of the Petitioner. Rule 3 in Part VI provides that, if the Petitioner does not file such a memorandum the court may dismiss the application in the event of the death and/ or the change of status of the Petitioner. When instituting the instant action, the Petitioner has not filed a memorandum nominating legal representatives to be substituted for the purpose of prosecuting his case in the event of his death and/ or change of status. The position of the Petitioner had been that the recommendation of the AAT to reinstate him in the service on a prospective date and to consider the period which he was out of the service as a period of no pay would affect to his uninterrupted service, due promotions, salary increments and increases. If the recommendations of the AAT affect to the Petitioner's uninterrupted service, due promotions, salary increments and increases it would definitely affect to his Widows' and Orphans' pension also. Therefore, I hold that after the death of the Petitioner his application survives and his heirs should be substituted to prosecute the application of the Petitioner even though, he had not filed a memorandum in terms of rule 1 in Part VI of the Court of Appeal (Appellate Procedure) Rules of 2018. The application of the widow and the child of the Petitioner is allowed. File the amended caption citing the wife and the child of the Petitioner as 1A and 1B substituted Petitioners respectively.

Objection on behalf of the Respondents overruled.

JUDGE OF THE COURT OF APPEAL

M.T. MOHOMAD LAFFAR J.

I agree.

JUDGE OF THE COURT OF APPEAL