

**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* under and in
terms of Article 140 of the Constitution.

CASE NO: CA/WRIT/383/19

Herath Mudiyansele Bandara Menike
No. 18/2, Yaye 6,
New Town,
Medirigiriya.

PETITIONER

VS.

1. Jagath Dias,
Director General of Pensions,
2. R.M.A.I. Rathnayake,
Assistant Director (Policy),

Both of Department of Pensions,
Maligawatta.
3. J.B. Rathanasiri,
Secretary
4. Hon. Janaka Bandara Tennakoon
Minister of Public Administration,
Home Affairs, Provincial Councils
and Local Government

Both of Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government,
Independent Square,
Colombo 7.

RESPONDENTS

Before: **M. T. Mohammed Laffar, J. and
S. U. B. Karalliyadde, J.**

Counsel: Prinath Fernando for the Petitioner.

Nayomi Kahavita, S.C., for the Respondents

Argued on: 12.01.2022.

Written Submissions on: 22.02.2022 (by the Petitioner)
Not tendered (by the Respondent)

Decided on: 30.03.2022

Mohammed Laffar, J.

The Petitioner in this application is seeking, *inter alia*, mandates in the nature of a writ of *Certiorari* to quash the decision of the Respondents marked P20 (a) and a *Mandamus* compelling the Respondents to grant the pension entitlements of W.M.K.G. Sunil Shantha Bandara to the Petitioner.

The Petitioner is the mother of W.M.K.G. Sunil Shantha Bandara who was serving as a Teacher in Agricultural Science from 02.01.1984. While in service, the said W.M.K.G. Sunil Shantha Bandara went missing since 10.08.1989. As per the Death Certificate bearing No. 3595 marked P4, the said W.M.K.G. Sunil Shantha Bandara, who was unmarried, demised on 10.08.1989.

After making several appeals to the appropriate authorities, the salary of the said deceased W.M.K.G. Sunil Shantha Bandara was paid to the Petitioner and her husband in 2003 until the 55th birthday of the said deceased (up to 20.10.2014). Thereafter by letter dated 23.11.2015, W.M.K.G. Sunil Shantha Bandara, was confirmed in service and accordingly, promotions were granted to him. As per the document

marked P21, the Petitioner's husband, W.M.K.G. Tikiribanda (W.M.K.G. Shantha Bandara's father) died on 14.01.2017.

Subsequently, the Petitioner, in terms of the Public Administration Circular No. 343 (marked P18), claimed the pension entitlements of W.M.K.G. Sunil Shantha Bandara. The 2nd Respondent (Assistant Director of Pension) on behalf of the 1st Respondent (Director General of Pension) in the document dated 28.10.2016 marked P20 (a) has taken a decision that the Petitioner is not entitled to the pension of her deceased son in terms of the Public Administration Circular No. 22/93 iv marked P20 (b).

The Petitioner states that the said decision marked P20 (a), not to grant the pension of W.M.K.G. Sunil Shantha Bandara to the Petitioner, is in violation (*ultra vires*) of Public Administration Circular No. 21/88 marked P6, Public Administration Circular No. 59/89 marked P7, Public Administration Circular No. 343 marked P18, Public Administration Circular No. 369 marked P24 and section 39 of the Minutes on Pensions marked P25. The Petitioner also states that the said decision contained in P20 (a) is in violation of natural justice which has been taken without a hearing to her.

In these circumstances, the Petitioner seeks a mandate in the nature of writ of *Certiorari* to quash the decision of the Respondents marked P20 (a) and a *Mandamus* compelling the Respondents to grant the pension entitlements of W.M.K.G. Sunil Shantha Bandara to the Petitioner.

The contention of the Respondents is that, as per the provisions of section 27 of the Widows and Orphans' Pension Fund Ordinance No. 1 of 1898 (as amended), only the *spouse* and *orphaned children* of the deceased public officer shall become entitled to receive the said benefits and there is no specific mention about the *parents* of a deceased public officer in

the said section. They further argue that section 39 (1) of the Minutes of Pension has no application to the facts of this case.

In the circumstances, the question for determination in this application is as to whether the Petitioner who is the mother of the said deceased public officer is entitled to the pension of the deceased.

The Respondents, in their objections, took up the position that the aforesaid Public Administration Circulars marked P6, P7, P18 and P24 are applicable to the public officers who are dead or injured due to terrorist activities.

In terms of the provisions of section 27 of the Widows and Orphans' Pension Fund Ordinance (as amended), only the spouse and orphaned children of the deceased public officer shall become entitled to receive the said benefits which reads thus,

“The widows and orphans entitled to pensions from the fund are the widows and orphans of public officers who have contributed to the fund in accordance with the provisions of this Ordinance or Ordinances Nos. 20 of 1885 and 21 of 1896, save as hereinafter excepted...”

However, it is to be noted that the said section cannot be considered in isolation, and section 27 of the said Ordinance has to be read with the Public Administration Circulars marked P6, P7, P18 and P24. As per the Public Administration Circular marked P7, P18 and P24, it is abundantly clear that the dependents of an unmarried deceased public officer, who died due to terrorist activities, are entitled to the pension of the said officer.

The said Sunil Shantha Bandara was missing since 10.08.1989. In terms of the Death Certificate marked P4, he was missing for more than one year and therefore, it has been presumed that he is dead. According to the documents produced by the Petitioner and the Respondents it has

been presumed that the said Sunil Shantha Bandara had died due to terrorist activities, that fact has not been disputed by the Respondents in this application.

In the document marked P20 (a), the Department of Pensions has admitted the fact that the said Public Officer had died due to terrorist activities, which reads thus,

“*ත්‍රස්තවාදී ක්‍රියා හේතුවෙන් මියගිය ඩබ්.කේ.පී.එස්. සුනිල් ශාන්ත බණ්ඩාර මහතාගේ උරුමකරුවන්ට විශ්‍රාම වැටුප් ලබා දෙන ලෙස ඉල්ලීම*”.

The aforesaid fact is further substantiated in the document marked P13 as well, which reads thus,

“*ත්‍රස්තවාදී ක්‍රියා හේතුවෙන් මරණයට පත්වූ රජයේ සේවකයින්ගේ යැපෙන්නන්ට සහන සැලසීම ඩබ්ලිව්.එම්.කේ.පී. සුනිල් ශාන්ත මහතා (ශ්‍රී.ගු.සේවය)*”

Having scrutinized the documents tendered by both parties and the submissions of the Counsel, it is clear that there is no dispute as to the fact that the said W.M.K.G. Sunil Shantha Bandara died due to terrorist activities.

Besides, in terms of section 39 (3) (i) of the Minutes on Pensions marked P25, the heirs of an unmarried deceased Public Officer are entitled to the pension of the said officer, which reads thus,

“3 (i) ... Where the deceased pensioner dies leaving no widow or children, such gratuity, pension or allowance shall be paid to the heirs of the deceased according to the law of intestacy applicable to the case may be...”

The learned State Counsel for the Respondents has not adduced acceptable reasons as to why section 39 (3) (i) of the Minutes on Pensions is not applicable to the Petitioner in the instant application.

In the circumstances, it is the considered view of this Court that the Petitioner in this application, who is the dependent/heir (mother) of the said deceased unmarried public officer is entitled to the pension of the said officer in terms of section 27 of the Widows and Orphans' Pension Fund Ordinance read with Public Administration Circulars marked P7, P18, P24 and section 39 (3) (i) of the Minutes on Pensions marked P25.

As such, the decision not to grant the pension of W.M.K.G. Sunil Shantha Bandara, which is set out in P20 (a), to the Petitioner is in violation of the Public Administration Circulars marked P7, P18, P24 and section 39 (3) (i) of the Minutes on Pensions marked P25. In these respects, the impugned decision is *ultra vires* and bad in law, and accordingly liable to be quashed.

For the above reasons, I proceed to allow this application.

Accordingly, a writ of *Certiorari* to quash the decision marked P20 (a) and a writ of *Mandamus* compelling the Respondents to grant the pension of W.M.K.G. Sunil Shantha Bandara to the Petitioner are issued as prayed for in the prayers (c) and (d) of the petition dated 05.09.2019.

I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL