

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

In the matter of an Appeal in terms of Article 154(P) (6) of the Constitution read with the Court of Appeal (Procedure for Appeals from the High Courts established by Article 154(P) of the Constitution) Rules 1988 in respect of the order dated 01.10.2007 made by the Provincial Holden in Anuradhapura in H.C. (Writ) Application No.29/2003.

CA/PHC/173/2007

Provincial High Court,
North Central Province
Holden in Anuradhapura
Writ Application No.29/03

1. C. Samarasinghe,
No.211, Jayasiripura, Anuradhapura.
2. W.A. Weerasena
Habarana Road, Palugaswewa.
3. D.B. Edirisuriya,
No.295/5, Rajamaha Vihara Road, Mirihana,
Kotte.
4. K.M. Karunaratne
Balawala, Bopitiya
5. K.G. Gunapala,
No.128, Gomarankella, Galenbindunuwewa.

6. R.A. Seneviratnem,
“Kanthi Villa”, Yagodamulla, Kotugoda.
7. W.G. Dhanapala Gamage
Watte Gedara, Maradankadawela.
8. S.P.A. Sunil,
No.65D, New Puttalam Road, Pandulugama,
Anuradhapura.
9. A.G.S. Athukorala, Liyanage Stores,
Ingiriya, Maha Ingiriya.

PETITIONERS

Vs.

1. North Central Provincial Council, Anuradhapura.
2. Hon. Bertu Premalal Dissanayaka,
Chief Minister,
North Central Province, Anuradhapura.
3. Provincial Public Service Commission,
North Central Provincial Council, Anuradhapura.
4. Secretary,
Provincial Public Service Commission,
North Central Provincial Council, Anuradhapura.
5. Provincial Road Development Authority,
North Central Provincial Council,

No.527/16, D.S. Senanayake Mawatha,
Anuradhapura.

6. Chairman,
Provincial Road Development Authority,
North Central Provincial Council,
No.527/16, D.S. Senanayake Mawatha, Anuradhapura.
7. Road Development Authority Sethsripaya,
Battaramulla.

RESPONDENTS

AND

1. C. Samarasinghe,
No.211, Jayasiripura, Anuradhapura.
2. W.A. Weerasena
Habarana Road, Palugaswewa.
- 2A. Anusadahamige Gnanawathi,
Galkadawala Road, Palugaswewa.
- 2B. Wanniarachchige Pradeep Asela Wanniarachchi,
Galkadawala Road, Palugaswewa.
- 2C. Disna Subashini Wanniarachchi,
Galkadawala Road, Palugaswewa.
3. D.B. Edirisuriya,
No.295/5, Rajamaha Vihara Road, Mirihana,
Kotte.

4. K.M. Karunaratne
Balawala, Bopitiya.
5. K.G. Gunapala of No.128,
Gomarankella, Galenbindunuwewa.
6. R.A. Seneviratne,
“Kanthi Villa”, Yagodamulla, Kotugoda.
7. W.G. Dhanapala Gamage,
Watte Gedara, Maradankadawela.
8. S.P.A. Sunil,
No.65D, New Puttalam Road, Pandulugama,
Anuradhapura.
9. A.G.S. Athukorala, Liyanage Stores,
Ingiriya, Maha Ingiriya.

PETITIONER-APPELLANTS

Vs.

1. North Central Provincial Council, Anuradhapura.
 2. Hon. Bertu Premalal Dissanayaka,
Chief Minister,
North Central Province, Anuradhapura.
- 2A.S.M. Peshala Jayaratne Bandara,
Chief Minister,
North Central Province, Anuradhapura.

- 2B.Hon. Governor Mahiepala Herath,
Governor of North Central Province,
Governor's Secretariat, North Central Province,
District Secretariat Building, Anuradhapura.
3. Provincial Public Service Commission,
North Central Provincial Council, Anuradhapura.
4. Secretary,
Provincial Public Service Commission,
North Central Provincial Council, Anuradhapura.
5. Provincial Road Development Authority,
North Central Provincial Council,
No.527/16, D.S. Senanayake Mawatha, Anuradhapura.
6. Chairman, Provincial Road Development Authority,
North Central Provincial Council,
No.527/16, D.S. Senanayake Mawatha, Anuradhapura.
7. Road Development Authority Sethsiripaya,
Battaramulla.

RESPONDENT-RESPONDENTS

Before: **PRESANTHA DE SILVA, J. &
K.K.A.V. SWARNADHIPATHI, J.**

Counsel: Vishwa De Livera Thennakoon
(For the 1st, 2^A, 2B, 2C, 3rd, 4th, 5th and the 7th Petitioner-Appellants)

Sumithi Dharmawardhana, ASG,
(For the Defendant-Respondents)

Argued on: 08.02.2022

Judgment

delivered on: 07.04.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

This Appeal emanates from an order of the North Central Provincial High Court Holden in Anuradhapura in case No. Writ Application 29/03 dated 01.10.2007. In the High Court, the 1st to 7th Petitioners had moved for a Writ of Mandamus.

According to the Petitioners, they were the employees of the Road Development Authority. With the 13th Amendment to the constitution of the Republic, roads that were graded as “C” and “D” were handed over to respective Provincial Councils for maintenance of roads.

The Petitioners were transferred to the Provincial Council, Housing and Constructions, Sports and Youth Affairs and High Ways Department of the North Central Provincial Council with effect from 01.01.1990.

All the Petitioners were served with new letters of employment, which were marked and produced as “P1(A) to P1(I). The 4th Respondent issued the letters. The Petitioners state that by Gazette dated 08.07.1994, the posts they held were gazetted as pensionable posts within the provincial service. They produced and marked the said Gazette with a document marked as [P3].

When perusing the Gazette in the 1st part of Chapter (1), item No.28 is Heavy Vehicle operator. When perusing the letters of Appointments marked as [P1] [P1(a), P1(b), P1(e), and P1(f), they are all letters of appointments to the post of Heavy vehicle operator. Item No.30 is Geezers. The appointment letters P1(c), P1(d), P1(g) and P1(i) are appointments as Geezers. The Petitioners alleged that even with the Gazette notification pronouncing them as eligible for a pension, the

Respondents failed to take steps to make their posts as pensionable. Then a Writ of Mandamus was prayed for by the petitioners from the Provincial High Court of Anuradhapura.

After hearing both parties, the learned High Court Judge had dismissed the Petition of the Petitioners. Aggrieved by that order, the present application was filed in this court.

When perusing the High Court order dated 01.10.2007, among other matters Judge had held:

- These Petitioners are in excess service who had obtained salaries without contributing to service. Therefore, the Respondents will have no statutory duty to absorb these officers into a permanent, pensionable carder.
- To pray for a mandamus.
- Letters of Appointment of the Petitioners do not indicate that they are eligible for a pension.

When the matter was taken up for argument in this court on behalf of the Petitioners, Counsel stated that Petitioners have a legitimate expectation due to the Respondents' conduct. On that ground, the Petitioner's prayer of the Petition should be granted.

On behalf of the Respondents objecting to the Petitioners' application, none of the Appointment letters speaks of a pension. Initially, the Petitioners were the Road Development Authority employees, a statutory body and not a government organisation. Employees of statutory bodies are not entitled to a pension.

Since there is no legal right, the Petitioners cannot have expectations. The Petitioners failed to prove there was an assurance on the part of the Respondents to make their services pensionable. The document marked [P5], which the Petitioner say had given expectation, is only a letter calling for expression of interest.

The Petitioners were employed in a temporary institution called "Department of Highways" with E.P.F. and ETF benefits.

Then the Provincial Council created the “Development Construction and Machinery Agency” and absorbed the Petitioners into the said agency. The Petitioners had suppressed this fact.

Therefore, they become unsuitable for praying for a writ pointing out the decision of *Alponsu Apphuhamy Vs. Hetarachchi*¹ reads as when an application for a prerogative writ or an injunction is made; it is the duty of the Petitioner to place before the court before it issues notice in the first instance a full and truthful disclosure of all the material facts. The Petitioner must act with “*Uberrima fides*”. Speaking of *Jayaweera Vs. Assistant Commissioner of Agrarian Services*²

“Petitioner seeking a prerogative Writ is not entitled to relief as a matter of right or as a routine. Even if he is entitled to relief, still court has the discretion to deny him relief having regard to his conduct, delay, laches, waiver, submissions to jurisdiction are all valid impediments which stand against the grant of relief”.

The Respondents based their arguments on the ground that the application was misconceived. The Petitioners’ relationship with the Respondents depends on a contract. The Petitioner, therefore, seeks payment on the contract.

Therefore, a writ of Mandamus is not available to the Petitioner. The Petitioner had failed to disclose the statutory provision that has been violated. He had not established the legal right he had or the legal duty on the part of the Respondents.

Arguing on the point of legitimate expectations, the Respondents argued that an unlawful decision will not or should not be considered a legitimate expectation.

Considering the submissions of both parties, first and foremost, following reasoning, I set aside the order of the provincial High Court Judge. It was not the duty of the learned High Court Judge to determine whether the Petitioners' service was in excess or they had derived a salary or a payment without contributing.

¹ 77 NLR on page 131

² (1996) 2 S.L.R. at page 70.

When considering the submissions of all parties, it is agreed that the Petitioners were employed formally by the Road Development Authority. With the 13th Amendment, the Petitioners were absorbed into provincial government service. The question arises as to whether their nature of employment was contractual or not. Perusing the letters of Appointment marked as [P1] documents;

Section 2(b) states as follows: -

The permanent post held by you up to now will continue under Section 6, it speaks of a signing of a contract. No contract of employment was marked in court.

Therefore, I will have to consider Section 2 a permanent position. The document marked [P4] is a letter issued by the Secretary to the Chief Minister of North Central Province, who is the 4th Respondent; based on that letter, the Chief Engineer, Department of Roads North Central Province, issued the documents marked as [P5] requesting what the employees which their status in employment should be.

Clause 3 of the letter reads as “subject to the present salary scale of the provincial council to enter into the government service with a pension.”

Both parties argued this. The Petitioners argue that it is an expression of legitimate expectation. The Respondents disagreed. The Chief Engineer cannot employ anyone to pensionable service. What he had stated is what is already in operation.

Clause 3 indicates that “there is a public service with a pension. Not that he is giving or creating a pensionable service. The document marked [P7] indicates all employees' preferences to the document marked [P5].

All the Petitioners had made their preference under Clause 3. The Gazette dated 08.07.1994 proves that the Heavy vehicle operator and Geezers' positions were gazetted as positions in the provincial Government Service of the North Central Province in a pensionable position.

When [P5] was sent to Petitioners, Clause 3 of that letter was not introduced by the Chief Engineer, who had no legal right to create such conditions but what was legitimately there published by a Gazette. Therefore, I am compelled to accept the argument by [P5] that a legitimate expectation was given to the Petitioners. The document marked [P5] was issued about two years after the Gazette.

With the 13th Amendment to the constitution of the Republic, the Provincial councils came into existence. They have certain powers in administration. However, their powers should not exceed the power of the Central Government.

The Gazette referred to above is not a publication of the provincial Government but the Central Government. The Minister of Public Administration signed it. He had declared the Gazetted posts as pensionable in the provincial government service.

No one can challenge the validity of that Gazette when perusing what the Minister had signed speaks of North Central Province and all provinces. The Gazette is an indication that granting a pension to named positions was the intention of the Government.

In the case of the *Attorney General of Hongkong*³ held that

“When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as the implementation does not interfere with a statutory duty.”

In the case of *Vickremarathne Vs. Jayarathna*,⁴ U. De Z. Gunawardhne J. mentioned the above case and further stated that;

“The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected but is also extended to situations even where no right to be heard was available or existed, but fairness required a public body or officials to act in compliance with its public undertakings and assurances.”

³ (1983), 2 A.L. pg. 629

⁴ (2001) 3 S.L.R. pg. 161

The Petitioners of this case cannot be considered as arguing the matter on legitimate expectation only. They joined the Road Development Authority later, after the 13th Amendment, they were absorbed into the Provincial Council. The provincial Council must serve letters of Appointment to the Petitioners.

The document marked [P1] is a letter of Appointment that says that the Petitioners are employed to the Government Service of the North Central Province. The document marked [P2] Director of Ministry of Public Administration, Home Affairs Plantation Industries and Parliamentary Affairs issue a letter for steps to be taken regarding the officers/servants released to the provinces. In this letter, there is a clause that says that with the consent of the person concerned..... absorbed into the provincial Government Service.

The document marked [P3] indicates the notice issued to all sections of Ministries and officers in the North Central Province to take note of the Gazette dated 08.07.1994. If there is any discrepancy in the positions' names, inform the Deputy Secretary of Administration.

This letter [P3] proves the intention of the provincial Council to absorb the Petitioners into the Government service. Therefore, the document marked [P5] is based on the documents marked [P2] and [P3].

The document marked [P7] is the list of employees who had replied to the request letter [P5] addressed to the Chief Secretary of North-Western province. The letter indicates the list is sent for necessary steps to be taken.

The provincial parliament admitted the subject of granting pensions on 09.04.2002 according to the document marked [P14].

According to the Gazette marked with the document, these documents prove that Petitioners were entitled to be absorbed as Government Officers [P3]. The Provincial Council must carry out the promise given to these officers. The Secretary of the North Western Province and other Respondents are government officers who had violated a duty cast upon them.

An argument was raised on behalf of Respondents that as the Petitioners had not named natural persons, this Petition should be rejected. There have been instances in which Mandamus was issued against co-operations. In the case of *Ariyaratne Vs. Sri Lanka Institute of Architects*⁵, J.A.N. De Silva J. stated, “I am also mindful of the fact that a writ of Mandamus can be issued against the corporate body.

In many cases, it had held that a Writ of Mandamus could only issue “against a natural person who holds a public office. The rationality behind this is that a natural person who fails to comply with a Writ of Mandamus can be imprisoned for noncompliance on a charge of contempt of court. A legal person or a co-operation cannot be imprisoned; as imprisonment is not the only punishment for contempt of court, a fine can also be imposed; therefore, a Writ of Mandamus can be issued on legal persons.

Though I will not go into the details of C.A. Writ 151/2008 1st, 3rd, 4th, 5th and 7th Petitioners had filed Petitions in this court against some Respondents named in this application against terminating the services of the Petitioners.

That letter of termination dated 01.04.2008 was challenged. The termination was after filing case No.29/2003 in the High Court of Anuradhapura. Justice, A.H.M.D. Nawaz J. had observed: “In the circumstances, this court is satisfied that the decision contained in the letters marked [P33(a) to [P33(f)] is *ultra vires* on the grounds that;

- (a) Governor had terminated the services of the Petitioners in the absence of a code of conduct.”
- (b) The governor failed to exercise independent discretion and;
- (c) The service of the Petitioners was terminated in breach of the rules of natural justice.

Wright J. emphasised in *General Medical Council Vs. Spackman*⁶, “If the principles of natural justice are violated in respect of any decision, it is immaterial whether the same decision would

⁵ (2001) 3 S.L.R. pg. 287

⁶ (1943) A.C. pg. 627

have been arrived at in the absence of essential principles of justice. The decision must be declared no decision”.

What the Petitioners had been given in case No.541/2008 will not be fruitful if they fail in the present case. As discussed above, there was a legitimate expectation that the Petitioners will be given a pension. According to the Gazette mentioned above, the positions they held were pensionable.

The final question is whether the Respondents had a legal obligation and violated the same. The Respondents were officials who held the responsibility of the employment and governing authority regarding the Petitioners.

Therefore, they were responsible for absorbing the Petitioners from the 7th Respondent into provincial service. Their duty was to absorb and act according to the Gazette and issue proper employment letters. The legal obligation violated by the Respondents was that they had not issued proper letters of employment. As officials of the Provincial Government of North Central Province, the Respondents have a public duty to exercise their powers regarding the Petitioners.

The Petitioners were given an opportunity to state what category they would choose in the document marked [P5]. All correspondents marked in this case, which made the Chief Engineer to write the document marked [P5], indicate the right of the Petitioners had to invoke a Writ of Mandamus.

The right is a legal right created by legitimate expectation that they will be absorbed into a service described under clause 3 of the document marked [P5]. Therefore, the Petitioners have given a legal right and not a right of equitable nature.

Another point on which the Respondents based their argument is the misrepresentation of facts. Perusing the documents of the Respondents, there was nothing to prove their argument. Mere stating a fact cannot be considered without proof; therefore, I presume that the Petitioners had not misrepresented any material fact in this case.

For reasons discussed above, I grant the prayers (a) and (b) of the Petition of Appeal dated 26.11.2007. Further, I order granting prayer “c “of the Petition dated 22.06.2003 to the Provincial High Court Holden in Anuradhapura.

Judge of the Court of Appeal

PRESANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal