

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

In the matter of an Application for Writs of  
Certiorari and Mandamus under and in term of  
Article 140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

**CA (Writ) Application No.  
38/2020**

M.K.B. Herath  
No. 35B/2, Pragathi Mawatha,  
Uda-Eeriyagama,  
Peradeniya.

**PETITIONER**

**VS.**

1. A. Jagath D. Dias  
Director General of Pensions,  
Department of Pensions,  
Maligawatta,  
Colombo 10.
2. U.P. Indika Anuruddha Piyadasa,  
Divisional Secretary of Yatunuwara,  
Divisional Secretariat,  
Embilmeeagama,  
Pilimathalawa.
3. H.A. Chandana Kumarasinghe  
Director General of Establishment,  
Ministry of Public Administration and  
Disaster Management,  
Independence Square,  
Colombo 7.

4. S. Hettiarachchi,  
Secretary, Ministry of Public  
Administration,  
Ministry of Public Administration,  
Independence Square,  
Colombo 7.
5. Secretary,  
National Salaries and Cadre Commission,  
BMICH,  
Buddhaloka Mawatha,  
Colombo 7.
6. Director General of Agriculture,  
Department of Agriculture,  
Peradeniya.

**RESPONDENTS**

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

**S. U. B. Karalliyadde, J.**

**Counsel:**

Chamara Nanayakkarawasana instructed by Sunil Watagala for the Petitioner

Ms. A. Gajadeera, SC for the Respondents

**Written submissions tendered on:**

05.08.2022 by the Petitioner

31.08.2022 by the Respondents

**Argued on:** 06.06.2022

**Decided on:** 22.09.2022

**S.U.B. Karalliyadde, J.**

The Petitioner to this Writ Application joined the Public Service in 1968 as a Clerk of the General Clerical Service and he was promoted to the Supra Class of the General Clerical Service with effect from 01.01.1984. Upon the formation of the Management Assistants' Service, he was absorbed into the Supra Class of the Management Assistants' Service with effect from 01.01.2004. Thereafter, based on the results of a competitive examination, he was appointed as a Class III Officer of the Sri Lanka Administrative Service with effect from 28.05.2006 by letter dated 20.06.2007 marked as P6. Upon reaching the age of 60 years, the Petitioner retired from the public service on 30.05.2006 while serving in the Department of Agriculture. After his retirement, by the Public Administration Circular No. 6/2006 dated 25.04.2006 marked as P7A and the Public Administration Circular No. 6/2006(iv) dated 24.08.2007 marked as P8 the salary scales of the public service were restructured. It was the submission of the learned Counsel appearing for the Petitioner that the Petitioner has retired on 30.05.2006 and therefore, his salary scale should be amended as per P8 which came into effect from 01.06.2007. On 25.06.2015 Public Administration Circular No. 16/2015 marked as P9 was issued revising the pensions of the public servants who retired before the implementation of the P7A and P8. Thus, the learned Counsel for the Petitioner argues that the Petitioner is entitled to a revision of his pension in terms of P9. The Petitioner has written to relevant authorities requesting to amend his pension as per the Circular marked as P9. By the letter dated 21.02.2019 marked as P26 the Director General of Pensions (the 1<sup>st</sup> Respondent) informed the Petitioner that since he had retired as an Officer in Class III of the Sri Lanka Administrative Service after being placed in a salary step in the salary scale of SL 1-2006 which is applicable to the public officers in the Sri Lanka Administrative Service, his pension cannot be revised in term of P9 for the reason that SL 1-2006 salary scale has not been amended by the P8. By the letter dated 03.07.2019 issued by the 1<sup>st</sup> Respondent marked as P29, the Petitioner

was informed that he is not entitled to a pension revision in terms of P9 for the reason that the Petitioner belongs to the Sri Lanka Administrative Service and the applicable salary scale to him in that Service had not been amended by P8. The position of the Petitioner is that the aforementioned decisions of the Respondents not to revise his monthly pension in terms of P9 is illegal, arbitrary, unreasonable, irrational and capricious. By this writ Application, the Petitioner is seeking reliefs, *inter alia*, a writ of Certiorari to quash the decisions contained in the documents marked as P29 and P26 and a writs of Mandamus directing the 1<sup>st</sup>- 4<sup>th</sup> Respondents to revise his pension in terms of the Public Administration Circular marked as P9 based on the recommendations of the National Salaries and Cadre Commission (5<sup>th</sup> Respondent) marked as P15, P16, P22 and P23.

The Petitioner admits that his monthly salary is stipulated in terms of P7A restructuring salaries in the public service. P7A was again amended by P8 increasing the salaries of the public officers. The learned Counsel appearing for the Petitioner has drawn the attention of the Court to the fact that when an Officer is promoted or appointed to a new post, the salary after the new promotion/appointment must be decided in terms of Section 5 of Chapter VII of the Establishment Code according to which such officer being placed in a higher salary scale than his previous salary scale.

On that basis, the learned Counsel argued that the salary of the Petitioner in the Sri Lanka Administrative Service should be decided based on the salary step applied to him in the Supra Class of the Management Assistants' Service which is the salary scale of MN 7-2006. The contention of the learned Counsel for the Petitioner is that the salary scale of MN 7-2006 was amended by P8 and if the Petitioner was in service at the time of introduction of P8, it would have resulted in him being placed on a higher salary step in the salary scale of SL 01-2006 which was applied to him in the Sri Lanka Administrative Service.

The learned Counsel for the Petitioner then argued that the Petitioner is entitled to have his pension revised in terms of P9 which was issued to revise the pensions of the public servants who retired before the implementation of P7A and P8. By letter dated 15.02.2016 marked as P11, the Petitioner requested from the Divisional Secretary of Yatinuwara (the 2<sup>nd</sup> Respondent) to adjust his pension in terms of P9. By the letter dated 24.05.2016 marked as P12, the Secretary Ministry of Public Administration (4<sup>th</sup> Respondent) sought observations from the Secretary to the National Salaries and Cadre Commission (the 5<sup>th</sup> Respondent) about the request made by the Petitioner to adjust his pension in terms of P9. Responding to a letter dated 24.10.2016 of the 2<sup>nd</sup> Respondent to get confirmed the salary of the Petitioner, the 5<sup>th</sup> Respondent, by letter dated 16.11.2016 marked as P15 informed the 2<sup>nd</sup> Respondent that the salary step which should be applicable for calculation of the pension of the Petitioner is Rs. 30,675/-. The Petitioner states that even though, the 5<sup>th</sup> Respondent informed the 2<sup>nd</sup> Respondent to revise his pension in terms of P9, no steps have been taken by the 2<sup>nd</sup> Respondent to revise his pension in terms of P9. The Petitioner further states that even though, the 5<sup>th</sup> Respondent, by letters dated 22.02.2017, 06.10.2017 and 06.12.2017 respectively marked as P18, P22 and P23 informed the 2<sup>nd</sup> Respondent to revise his pension, no steps had been taken by the 2<sup>nd</sup> Respondent. Thereafter, the Petitioner brought this matter to the attention of the Director General of Establishment (the 3<sup>rd</sup> Respondent), who referred the matter to the 4<sup>th</sup> Respondent by letter dated 19.07.2018 marked as P24. As per the letter dated 13.08.2018 marked as P25, the Petitioner's pension file was forwarded by the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent seeking assistance to take a decision. In the meantime, the 1<sup>st</sup> Respondent, by the letter dated 21.02.2019 marked as P26 informed the 2<sup>nd</sup> Respondent that the Petitioner had retired as an Officer in Class III of the Sri Lanka Administrative Service while being placed in the applicable salary step to him in SL 01-2006 salary scale of the Sri Lanka Administrative Service and said scale has not been amended by P8 and therefore, his pension cannot be revised in terms of P9. By the letter dated 04.04.2019 marked as P27 addressed to the 1<sup>st</sup> Respondent,

the Petitioner explained the manner in which he falls within the provisions of P9. However, by the letter dated 03.07.2019 marked as P29, the 1<sup>st</sup> Respondent refused to revise the pension of the Petitioner in terms of P9 reiterating the same reasons mentioned in P26.

According to the letter of appointment of the Petitioner to the Sri Lanka Administrative Service marked as P9, the salary scale which was applied to the Petitioner when he joined the Sri Lanka Administrative Service on 28.05.2006 is SL 01-2006 mentioned in the Circular marked as P7A. He retired from the service on 30.05.2006 two days after he was promoted to the Sri Lanka Administrative Service. The Circular marked as P7A has been subsequently amended by the Circular marked as P8 revising the salaries of the public officers. It has been stated in the Circular marked as P8 that it does not apply to the public officers who come under the SL salary scales. Therefore, P8 is not applicable to the Petitioner as his salary scale falls within the ambit of SL salary scales. Moreover, P8 came into effect on 01.06.2007 revising the salaries of public officers who were serving at the time it came into effect and by that time the Petitioner had retired from his service.

In paragraph 53 of the written submissions dated 05.08.2022 filed on behalf of the Petitioner, it has been admitted that P8 does not amend the SL salary scales applicable to the Sri Lanka Administrative Service. However, the position of the learned Counsel appearing for the Petitioner is that the Petitioner is entitled to a revision of his pension in terms of P9 as his salary in the Sri Lanka Administrative Service was decided based on his salary scale in Supra Class of the Management Assistants' Service which was amended by P8. The learned Counsel appearing for the Petitioner submitted to the Court that, the Petitioner falls within the category of an officer stipulated in Clause 2.2(⊗) in the Circular marked P9; which states that *'pensioners who have retired before 01.06.2007 from the posts relevant to the salary revised by the P.A.C.06/2006 (IV) implemented from 01.06.2007, and receiving a pension based on the salary paid to them under P.A. Circular 06/2006 implemented from 01.01.2006 up to 31.05.2007'*.

According to the aforementioned clause, it applies to the pensioners who retired before 01.06.2007 from the posts relevant to the salary scales which were revised by P8. Thus, there is no applicability of this clause to the Petitioner even though, he had retired before 01.06.2007 as P8 does not amend the SL salary scale applicable to the Petitioner. Consequently, there is no applicability of P9 to the Petitioner.

As a response to the request made by the Petitioner to adjust his pension, the 5<sup>th</sup> Respondent issued letters marked as P15 (dated 16.11.2016), P16 (dated 13.11.2017), P22 (dated 06.10.2017) and P23 (dated 06.12.2017) to the 2<sup>nd</sup> Respondent. By the letter marked as P15, the 5<sup>th</sup> Respondent informed the 2<sup>nd</sup> Respondent, *inter alia*, that when deciding the pension of the Petitioner, SL 1-2006 salary scale mentioned in P7A should be considered as the applicable salary scale and the salary step which should be taken into consideration for the purpose of deciding the pension is Rs. 30,675/-, which reads thus;

“ 02. එම ලිපියෙන් විමසා ඇති පහත නම් සඳහන් විශ්‍රාමික නිලධාරියා සඳහා අදාළ කරගත යුතු වැටුප සම්බන්ධයෙන් විස්තර පහත පරිදි වේ.

- (i) නම : එම්. කේ.බී.හේරත් මයා
- (ii) තනතුර/සේවාව : ශ්‍රී ලංකා පරිපාලන සේවය
- (iii) ශ්‍රේණිය / පංතිය : III
- (iv) විශ්‍රාම ලැබූ දිනය : 2004.04.25
- (V) වැටුප
  - (අ) රාජ්‍ය පරිපාලන චක්‍රලේඛ 6/2006 අනුව අදාළ වැටුප් ක්‍රමය: SL-1-2006
  - (ආ) රාජ්‍ය පරිපාලන චක්‍රලේඛ 6/2006 අනුව වැටුප පරිවර්තනය සඳහා අදාළ කරගත යුතු ආරම්භක වැටුප් පියවර: රු. 22,935/
  - (ඇ) උපයාගෙන ඇති වැටුප් වර්ධක ගණන: 27
  - (ඈ) විශ්‍රාම වැටුප සංශෝධනය කිරීම සඳහා අදාළ කරගත යුතු වැටුප් පියවර: රු. 30,675/

03. ඉහත පරිදි විශ්‍රාම වැටුප සංශෝධනය කිරීමට කටයුතු කරන ලෙස කාරුණිකව දන්වා සිටිමි.”

By the letter dated 13.11.2017 marked as P16, correction has been made to the date of retirement of the Petitioner mentioned in P15. In the letter marked as P22. The 5<sup>th</sup> Respondent has reiterated the facts, *inter alia*, that in terms of P7A, the salary scale which should be applicable to the officers in the Sri Lanka Administrative Service is SL-1, that scale has not been amended by P8 and the Petitioner’s pension should be decided as per the recommendations in P15 as follows;

“02. ශ්‍රී ලංකා පරිපාලන සේවය සඳහා රාජ්‍ය පරිපාලන චක්‍රලේඛ 6/2006 මඟින් අදාල වන්නේ SI - 1 වැටුප් පරිමාණයයි. එම වැටුප් පරිමාණය රාජ්‍ය පරිපාලන චක්‍රලේඛ 62006(IV) මඟින් සංශෝධනය වී නොමැත. එබැවින් කේ. බී. හේරත් මහතාගේ විශ්‍රාම වැටුප රාජ්‍ය පරිපාලන චක්‍රලේඛ 16/2015 අනුව සංශෝධනය කිරීම සඳහා NSCC/01/GP/14/1-V හා 2016.11.16 දිනැති නිර්දේශය පදනම් කර ගත යුතු බව කාරුණිකව දන්වා සිටිමි.”

The number of increments mentioned in P15 earned by the Petitioner has been amended to read as 12 by the letter marked as P23 and it reiterates the facts mentioned in the document marked as P15 in the following manner;

“03. එබැවින් එම්. කේ. බී. හේරත් මහතාගේ විශ්‍රාම වැටුප රාජ්‍ය පරිපාලන චක්‍රලේඛ 16/2015 අනුව සංශෝධනය කිරීමේදී III වන ශ්‍රේණියේ වැටුප් වර්ධක 12 ක් උපයාගත් විට හිමි වන රු.30,675/- යන වැටුප් තලය අදාල කරගත යුතුය.”

The aforementioned letters have been issued by the 5<sup>th</sup> Respondent to the 2<sup>nd</sup> Respondent regarding the request made by the Petitioner to amend his pension in terms of P9. As evident by the said extracts it is clear that the 5<sup>th</sup> Respondent neither recommended nor directed the 2<sup>nd</sup> Respondent to decide the Petitioner’s pension in terms of P9 by those letters.



In terms of P7A, at the time of his retirement, the Petitioner has drawn a salary of Rs. 30,675/- as per the letter dated 31.07.2007 marked as P7 issued by the Department of Agriculture (the 6<sup>th</sup> Respondent). The Petitioner does not argue that he was not placed in that salary step when he was retired. By P15 it transpires the fact that when deciding the pension of the Petitioner in terms of the Circular marked as P7A, his monthly salary has been considered as Rs. 30,675/-. Therefore, the Court can be satisfied that in deciding the pension, the Respondents had considered the Circular marked as P7A which is applicable to the Petitioner. The Petitioner seeks a Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent contained in the documents marked as P26 and P29 not to revise his pension in terms of Circular marked as P9.

In “Administrative Law” by H. W. R. Wade and C. F. Forsyth (11<sup>th</sup> Edition) characterizing writ of Certiorari states thus,

*“A quashing order issues to quash a decision which is ultra vires...The quashing order looks to the past... Quashing and prohibiting orders are discretionary remedies, and must be sought by the procedure of judicial review... (at page 509)*

*The quashing order thus performs a function not unlike that of a declaratory judgement: by quashing, the court declares that some purported decision or determination is irregular or futile and therefore, of no effect in law. The result is to establish that no one need take heed of it. The question at issue has not been lawfully determined, and the responsible authority must start again and determine it properly... (at page 516)”*

When considering the facts mentioned hereinbefore, this Court can be satisfied that the Respondents have lawfully determined the pension of the Petitioner in terms of the Circulars which should be applicable to the Petitioner. Therefore, the decisions of the 1<sup>st</sup> Respondent contained in the documents marked P26 and P29 are not illegal, *ultra vires*, unreasonable or irregular. Therefore, the decision contained in P26 and P29 are not liable to be quashed by way of a Writ of Certiorari.

The Petitioner seeks a Writ of Mandamus directing the Respondents to revise his pension as per the Circular marked as P9. It is settled law that a Mandamus to issue, the Petitioner must have a legal right and the Respondents must have a corresponding public duty. In *Credit Information Bureau of Sri Lanka Vs. Messers Jafferjee and Jafferjee (Pvt) Ltd*<sup>1</sup> the Supreme Court referred to the conditions that should be fulfilled prior to issuance of a writ of mandamus.

*“There is rich and profuse case law on mandamus, on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be:*

*a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought... .. The foundation of mandamus is the existence of a legal right.*

*b) The right to be enforced must be a “public right” and the duty sought to be enforced must be of a public nature....”*

It was further stated by His Lordship Justice J.A.N. De Silva that,

*“Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided, not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. The court will not grant a mandamus to enforce a right not of a legal but purely equitable nature however extreme the inconvenience to which the applicant might be put.”*

Referring to the above case, in *Kaluarachchi Vs Ceylon Petroleum Corporation and Others*<sup>2</sup> Fernando J, stated that,

*“the foundation of mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce a right which is not legal and not based upon a public duty.”*

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<sup>1</sup> 2005 (1) SLR page 89.

<sup>2</sup> SC Appeal No. 43/2013; SC Minutes of 19<sup>th</sup> June 2019.

It is evident from the above stated case laws that, a writ of mandamus to claim the Petitioner must have a legal right and the Respondents should have a corresponding public duty to perform towards the Petitioner. Since the Petitioner in the instant application has no legal right to get his pension adjusted in terms of the P9 and the Respondents have no public duty to adjust his pension as provided in P9 he is not entitled to a writ of Mandamus.

On the other hand, the public servants are not entitled to pension as an absolute right in terms of the regulations of the Minutes of Pension. In *Gunawardena Vs. Attorney General*<sup>3</sup> the Supreme Court held that, *"It was contended, a Court of Law has no jurisdiction in any matter relating to payment of pensions to retired government servants, such matters depending entirely upon the grace and bounty of Crown. In my opinion the Learned Commissioner's judgment upholding this objection was correct. The payment of pensions to retired government servants at the relevant date was regulated by certain rules sanctioned by the Secretary of State for Colonies and incorporated in the Minutes of Pensions dated 05.02.1934. Rule 1 expressly provides that public servants have no absolute right to any pension or allowance under these rules. "* This decision was followed in the case of *Attorney General Vs. Abeysinghe*<sup>4</sup> which states thus,

*"The expression "no absolute right to my mind means "no legal right" It is a signal hoisted by the draftsman to indicate both to the beneficiaries under the Minutes of Pensions and to the Courts that the Minutes are not to be taken as creating rights enforceable in the courts. The "no legal right" concept contained in rule 1 of the Minutes is then reinforced by the text of rules 2 and 15 which contain the expressions "may be awarded" and "may in his discretion granted "Whilst concurring with the above decision Tittawella J further observed, "I agree with the Chief Justice that the Minutes*

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<sup>3</sup> 47 NLR 359.

<sup>4</sup> 78 NLR 361.

*on Pensions create no legal right in favour of a Public Servant and that the court have no jurisdiction to entertain an action praying for a declaration in regard to his pension and the date from which he should be paid. I also agree that in Sri Lanka there is no constitution provision or any other provision of written law which has the effect of altering the provisions of rule1 of the Minutes of Pension."*

According to the said legal provisions the Petitioner does not have a right to demand to adjust his pension in terms of P9. Under the above stated circumstances, the Petitioner in the instant Application is not entitled to the writs prayed for in the Petition. Therefore, the Court dismiss the writ Application. No costs ordered.

*Application dismissed without costs.*

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**