

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

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

CA/WRIT/96/2021

M. C. Adam Bawa
No. 107, Maliga Road,
Karaithivu.

Petitioner

Vs.

1. The Secretary
Divisional Secretariat,
Karaithivu.
2. The Director of Pension
Department of Pension,
Maligawatte,
Colombo 10.
3. The Director of Zonal Education
Zonal Education Office,
Ampara.
4. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Sabry Nilamadeen with S. Rajendran for the Petitioner.

Hashini Opatha, SC for the Respondents.

Argued on : 10.10.2022

Decided on : 21.10.2022

Sobhitha Rajakaruna J.

The primary relief prayed for by the Petitioner is for an order in the nature of a writ of Certiorari quashing the decision of the 1st Respondent to deduct a sum of Rs. 134,850.90 from the Petitioner's pension. The said decision is reflected in letter dated 02.09.2020, marked 'P8a'.

In terms of the Award of Pension, marked 'P1', the date of retirement of the Petitioner is 18.11.1997 and the date from which the said award is payable is also the same date. The appointment held by the Petitioner at the date of retirement was one in the Sri Lanka Education Administrative Service II.

It appears as per the documents annexed to the Statement of Objections of the 1st, 2nd, 4th and 5th Respondents that Appeal and Investigations Committees have been appointed by the respective Ministries to investigate into complaints received with regard to politically victimized persons and to make recommendations. Such committees have been appointed based on Cabinet decisions in view of providing reliefs to the persons who have undergone problems due to purported political reasons.

The Cabinet of Ministers by virtue of their decision on 02.03.2016 has decided to instruct the Secretaries of the relevant Ministries to implement the decisions of the said Appeals and Investigations Committees and such approval has been granted as a matter of policy. (A copy of the said Cabinet decision is among the document, marked 'R2'). The letter dated 23.12.2016, marked 'P2', has been issued by the Secretary to the Ministry of Education ('4th

Respondent') as a consequence to the recommendations made by the respective Appeal and Investigations Committees.

The Director of Pensions ('2nd Respondent') after perusal of the said letter, marked 'P2', has brought to the attention of the 4th Respondent that there was an inconsistency between the item numbers (2) and (3) therein, as well as an inconsistency with regard to the effective date considered by other Government Departments in implementing such recommendations. (*Vide*- 'R3a', 'R3B' and 'R3C').

As a result, the 4th Respondent issued a letter dated 21.02.2019, marked 'R3e', clarifying the effective date of carrying out the recommendations of the aforesaid Committees. Accordingly, the contents of the letter marked 'P2' has been amended by the substitution of the sentence "*adjust the pension by granting salary increments and paying back wages considering the date of retirement of the retired officer*" with the sentence "*when the effective date of the recommendations is not mentioned, the date on which the Cabinet Memorandum has been approved i.e., 02.03.2016, should be considered in view of adjusting the pension and paying back wages to the retired officer*". Hence, the effective date of implementing the reliefs should be the date of the Cabinet decision.

The impugned decision reflected in letter dated 02.09.2020, marked 'P8a' has been issued based on such directive of the 4th Respondent and also based on the fresh directions given by the 2nd Respondent on 20.07.2020.

I am of the view that it is appropriate to draw my attention at this stage to the 'Rule of Recognition' which has been recognized as a concept of law by Hart. The following passage in '*Understanding Conceptions of Law by H. J. F. Silva, Royal Institute of Colombo (RIC), 2015*, is in my mind pertinent to the instant application;

"It was explained that the rule of recognition was intended to 'cure' the 'defect of uncertainty' in the primary rules. Its role was to (i) serve as a test to determine the valid laws in a legal system. Thus, it provided 'individual and officials with an authoritative criteria for identifying primary rules,'¹ (ii) resolve doubts and disagreements relating to the valid rules in a community, (iii) confer validity to primary rules in the system, provided they satisfied the criteria specified therein² and

¹ H. L. A. Hart, *The Concept of Law*, Clarendon Press, Oxford, 1994 p. 100

² *Ibid*

(iv) serves as the central agency for unifying the legal rules, into a legal system. There would not be a system but only a collection of disparate rules, if not for the presence of such a rule.”

Although, the 4th Respondent has rectified an ambiguity appeared in ‘P2’ by way of the letter marked ‘R3e’, still the Petitioner has not fallen into the category of officers who should be benefited under ‘P2’ as the Petitioner’s date of retirement is very much before the date of the Cabinet decision i.e., 02.03.2016.

This Court is unable to interpret the terms mentioned in ‘P2’ in favour of the Petitioner as alleged by the learned Counsel for the Petitioner since the said ‘P2’ has been amended subsequently by ‘R3e’ with proper authority. The said decision in ‘R3e’ is not being challenged by the Petitioner in this application and thus, I take the view that the Petitioner is not entitled to be benefited by the terms of ‘P2’. The learned State Counsel for the Respondents submitted that the decision in ‘R3e’ was taken as a policy decision in order to maintain consistency between the government institutions and also to regularize the procedure. Further, it is observed that the authority of the 4th Respondent to issue the letter marked ‘P3e’ is also not been challenged by the Petitioner.

The Petitioner has filed this application in this Court only on 27.07.2021 and by such time ‘R3e’ had been issued and the contents of ‘R3e’ had been adopted by the 1st Respondent by way of the impugned decision, marked ‘R8a’.

For the reasons set out above, I am of the view that no writ can be issued in favour of the Petitioner as prayed for in the prayer of the Petition. In the circumstances, I take the view that there is no merit in this application and accordingly, I proceed to dismiss this application.

Judge of the Court of Appeal

Dharmika Ganepola J.

I agree.

Judge of the Court of Appeal