

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

*In the matter of an application in the nature of  
Writs of Prohibition, Certiorari and Mandamus  
under Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

**CA/WRIT/106/2022**

1. Ceylon Bank Employees' Union  
No. 20,  
Temple Road,  
Colombo 10.
2. Mr. G. K. A. N. Peter  
44/20A, Lanarolle Maw.,  
Pahala Bomiriya,  
Kaduwela.
3. Mr. D. K. Siriwardhane  
3D/27, National Housing Scheme,  
Raddolugama.

**Petitioners**

Vs.

1. Bank of Ceylon
2. Kanchana Ratwatte  
Chairman, Board of Directors,  
Bank of Ceylon.
3. R. M. P. Rathnayake  
Member, Board of Directors,  
Bank of Ceylon.
4. G. H. Wijayawardena  
Member, Board of Directors,  
Bank of Ceylon.
5. A. C. M. Fernando  
Member, Board of Directors,  
Bank of Ceylon.

6. Maj. Gen. (Rtd.) G. A. Chandrasiri  
Member, Board of Directors,  
Bank of Ceylon.
7. K. E. D. Sumanasiri  
General Manager,  
Bank of Ceylon.

All the 1<sup>st</sup> to 7<sup>th</sup> Respondents of  
Bank of Ceylon, No. 1, BOC Square,  
Bank of Ceylon Mawatha,  
Colombo 01.

8. K. A. D. Wijewardhana  
DGM (Human Resources)
9. M. P. Ruwan Kumara  
DGM (Finance & Planning)
10. Ms. T. Perera  
AGM (Superannuation Schemes)
11. H. G. Nihal  
Elected Trustee
12. R. P. A. Nimal E. Peiris  
Elected Trustee
13. N. Wimal R. Fernando  
Elected Trustee
14. Ranjith Munasinghe  
Elected Trustee
15. H. N. K. Lalith Hemasiri  
Elected Trustee
16. N. K. Dahanayake  
Elected Trustee
17. M. S. A. Rodrigo  
Elected Trustee

18. E. R. Palitha Etampawala  
Elected Trustee

19. N. Warsawithana  
Elected Trustee

20. Channa Dissanayake  
Elected Trustee

All the 8<sup>th</sup> to 20<sup>th</sup> Respondents of;  
Bank of Ceylon Pension Trust Fund,  
C/O The Superannuation Department,  
Bank of Ceylon, 25<sup>th</sup> Floor,  
'BOC' Square, No. 1, Bank of Ceylon  
Mawatha, Colombo 01.

21. Lalith Withana  
(Former Member, Board of Directors,  
Bank of Ceylon),  
Presently, CEO, Sri Lanka catering  
Limited, Airline Centre,  
Bandaranayake International Airport,  
Katunayake.

22. Hasitha Premarthne  
(Former Member, Board of Directors,  
Bank of Ceylon),  
Presently, Group Finance Director,  
Brandix Group, No. 25, Rheinland  
Place, Colombo 03.

23. Mr. Senarath Bandara  
(Former General Manager, Bank of  
Ceylon),  
Presently Managing Director/ Chief  
Executive Officer, Cargills Bank,  
696, Galle Road, Colombo 03.

24. Mr. D. P. K. Gunasekara  
Former General Manager – BOC  
No. 30B, Sarath Elvitigala Mawatha,  
Siddamulla,  
Piliyandala.

25. Ms. Vishaka Amarasekara  
Former ex-officio member, Board of  
Directors,  
Presently, Additional Director General  
Ministry of Finance, Colombo 01.

26. Hon. Basil Rajapaksha  
Minister of Finance,  
The Secretariat,  
Colombo 01.

Hon. Ranil Wickremasinghe  
Minister of Finance, Economic Stability  
& National Policies,  
The Secretariat,  
Colombo 01.

(Substituted – 26<sup>th</sup> Respondent)

27. The Monetary Board of Central Bank  
No. 30, Janadipathi Mawatha,  
Colombo 01.

28. Mr. Ajith Nivard Cabraal  
Governor,  
Central Bank of Sri Lanka.

Dr. P. Nandalal Weerasinghe  
Governor,  
Central Bank of Sri Lanka.

(Substituted – 28<sup>th</sup> Respondent)

29. S. R. Attygalle  
Secretary to the Treasury, Ministry of  
Finance & Official Member of  
Monetary Board,  
Ministry of Finance,  
The Secretariat,  
Colombo 01.

Mr. K. M. Mahinda Siriwardana  
Secretary to the Treasury, Ministry of  
Finance & Official Member of  
Monetary Board,  
Ministry of Finance,  
The Secretariat,  
Colombo 01.

(Substituted – 29<sup>th</sup> Respondent)

30. Sanjeeva Jayawardena, President's  
Counsel  
Appointed Member of Monetary  
Board.

31. Dr. (Mrs.) Ranees Jayamaha  
Appointed Member of Monetary  
Board.

32. Samantha Kumarasinghe  
Appointed Member of Monetary  
Board.

Mr. Anthony Nihal Fonseka  
Appointed Member of Monetary  
Board.

(Substituted – 32<sup>nd</sup> Respondent)

33. Mrs. V. A. A. N. De Silva  
Director – Department of Bank  
Supervision,

All the 28<sup>th</sup> to 33<sup>rd</sup> Respondents of;  
Central Bank of Sri Lanka,  
No. 30, Janadhipathi Mawatha,  
Colombo 01.

34. Mr. G. H. D. Dharmapala  
Information Officer,  
Deputy Auditor General,

35. Mr. W. P. C. Wickramaratne  
Auditor General

Both 34<sup>th</sup> and 35<sup>th</sup> Respondents of;  
National Audit Office,  
306/72, Polduwa Road,  
Baththaramulla.

36. Hon. Attorney General  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Nalin Amarajeewa for the Petitioners.

Sumathi Dharmawardena PC, ASG with Shiloma David, SC for the 1<sup>st</sup> to 10<sup>th</sup> Respondents.

Uditha Egalahewa PC with Thilini Payagala Bandara and Tharushi Buddhadasa for the 21<sup>st</sup>, 22<sup>nd</sup>, 24<sup>th</sup> and 25<sup>th</sup> Respondents.

Harsha Fernando with Yohan Cooray and Chamith Senanayake for the 23<sup>rd</sup> Respondent.

**Supported on** : 30.08.2022

**Written Submissions:** Petitioner -09.12.2022

1<sup>st</sup> to 10<sup>th</sup> Respondents -20.10.2022

21<sup>st</sup>, 22<sup>nd</sup>, 24<sup>th</sup> and 25<sup>th</sup> Respondents-30.11.2022

23<sup>rd</sup> Respondent -05.12.2022

**Decided on** : 26.01.2023

**Sobhitha Rajakaruna J.**

The Petitioners referring to the Auditor General's Report of which the page Nos. 23 & 24 are marked as 'P2(a)', assert that the 1<sup>st</sup> Respondent-Bank of Ceylon ('Bank') has made a contentious payment aggregating to Rs.32,039,733.00 to the former General Manager of the Bank who is the 23<sup>rd</sup> Respondent as 'premature retirement' benefits during the year 2020. The Petitioners impugn the decision of the Board of Directors ('Board') of the Bank dated 04.03.2020 to pay such an amount of money to the 23<sup>rd</sup> Respondent. The Petitioners plead that the impugned decision reflected in 'P2(a)' is illegal, unlawful, arbitrary & ultra vires and the 2<sup>nd</sup>, 4<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 25<sup>th</sup> Respondents are jointly or severally liable to pay and indemnify sum of Rs.32,039,733.00 being the loss caused to the Bank by the said impugned decision.

The Petitioners further plead that the 2<sup>nd</sup>, 4<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> and 25<sup>th</sup> Respondents are no longer fit and proper persons to be Directors of any Commercial Bank including the 1<sup>st</sup> Respondent Bank.

The Respondents raising several objections move that the Application of the Petitioners be dismissed in limine. What needs consideration at this stage is whether the facts and circumstances of this case warrants this Court to issue formal notice on the Respondents. Further, the Court will have the task of weighing the requirement of granting a public law remedy in this Application against the objections of the Respondents on the maintainability of this Application.

The main objection of the 1<sup>st</sup> to 10<sup>th</sup> Respondents is that the matters referred to this Court are arising out of a contract and such assertions of the Respondents are based on the fact that the payment of retirement benefits to the 23<sup>rd</sup> Respondent is purely a matter within private law which pertains to matters arising from a contract of employment. The approach taken by this Court in several previous cases is that this Court has the discretionary power to exercise its writ jurisdiction even on a question arising out of a contract of employment, if the respective order is in breach of statutory restrictions/provisions and also if such public body has taken a decision assuming a jurisdiction which he does not have or exceeding his jurisdiction by violating a statutory requirement which eventually comes under any of the established grounds of judicial review. Similarly, I am mindful that judicial review is available when the alternative remedy is not adequate and efficacious.

The 21<sup>st</sup>, 22<sup>nd</sup>, 24<sup>th</sup> and 25<sup>th</sup> Respondents assert that the Petitioner is guilty of suppression and misinterpretation of material facts and lacks uberrima fidei essential to invoke prerogative writs. Another primary objection of those Respondents is that the Petitioners have not acted in good faith and not come to Court with clean hands. The 23<sup>rd</sup> Respondent also raises objections on (i) laches, (ii) not having necessary parties before Court, (iii) suppression & misrepresentation and (iv) clean hands.

The vital questions in the instant Application are whether the Board of the Bank is empowered to decide on premature retirement benefits in favour of the 23<sup>rd</sup> Respondent and whether the Cabinet of Ministers has taken a decision to retire the 23<sup>rd</sup> Respondent prematurely. Another reasonable question arising out of the pleadings is whether an employee who retires prematurely will be entitled to any entertainment allowances, payment of any bonus, component of contribution made to Pension Trust Fund etc.

The Respondents have, inter alia, cited the Cabinet Memorandum, marked '1R3', as the source of authority for the Board to have taken the decision of granting premature benefits to the 23<sup>rd</sup> Respondent. The contention of the Petitioner is that the Board could not decide on premature retirement benefits based on such Cabinet Memorandum. Hence, there is a necessity to carefully examine the said '1R3'. The contents of the Auditor General's letter dated 03.08.2022 addressed to the Attorney General (annexed to the motion dated 14.10.2022) needs to be properly evaluated. Particularly, the Court draws the attention to the following paragraph of the said letter;

“ඒ අනුව ඉහත කී අමාත්‍ය මණ්ඩල තීරණය අනුව, 23 වන වගඋත්තරකරු අමාත්‍ය මණ්ඩල තීරණය ප්‍රකාරව අදාළ උපදේශක තනතුර බාර නොගනිමින් විශ්‍රාම ගොස් තිබියදී අදාළ අමාත්‍ය මණ්ඩල තීරණයේ 5(ආ) ඡේදය පරිදි ප්‍රතිලාභ ලබා ගැනීම අදාළ විගණන ආස්ථිතය වන ලංකා බැංකුවේ මූල්‍ය ප්‍රකාශවලට අදාළව මතභේදයට තුඩු දෙන ගෙවීමක් ලෙස විගණනය විසින් හඳුනාගත් අතර එය පෙත්සමේ P2(e) ලෙස සලකුණු කොට ඇති 2019 වර්ෂය සඳහා ලංකා බැංකුවේ ගිණුම් සම්බන්ධයෙන් වූ විගණකාධිපතිගේ අවසන් විගණන වාර්තාවට ඇතුළත් කළ අතර ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 156(6) ව්‍යවස්ථාවේ ප්‍රතිපාදන ප්‍රකාරව පාර්ලිමේන්තුවට වාර්තා කරන ලදී.”



The Section 7 of the Bank of Ceylon Ordinance deals with the capital of the Bank and Section 65<sup>1</sup> provides that the provisions of the Part II of the Finance Act No. 38 of 1971 shall, *mutatis mutandis*, apply to the financial control and accounts of the Bank of Ceylon. In light of the above, it is necessary for this Court to draw attention to the component of the shareholding of the State and also the financial obligations of the Bank under statutory provisions for the purpose of fuller and proper adjudication of the instant Application.

Thus, I take the view that the facts revolving around the said objections should be clearly made available to this Court by way of complete sets of affidavits and not by limited Statement of Objections in order to examine the Respondents' said objections.

On an overall conspectus of the submissions made by all parties and based on the complexity of issues that require the resolution of this Court at a merits stage, I take the view that this Court should fully consider the facts and circumstances of this case on affidavits at a final hearing. Further, this Court takes the view that the preliminary issues of rejection have to be looked into only at the merit stage in view of the circumstances of this case. In that event, the Court will be able to consider whether there would be any merits on the objections raised by the Respondents, after considering all the facts and circumstances together with the complete submissions of the learned Counsel.

Hence, we decide to issue formal notice of this Application on the Respondents.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**

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<sup>1</sup> See – Section 22 of the Bank of Ceylon (Amendment) Law No.10 of 1974 by which the Section 65 of the Principal Enactment has been repealed and a new section has been substituted.