

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

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

**CA (Writ) Application No:  
407/2020**

1. H. M. R. Silva,  
No. 708, 3<sup>rd</sup> Lane,  
Croose Waththa,  
Kotugoda.
2. S. C. L. K. Wickramaratne,  
Koonagahawatte, Kudagama,  
Dombemada,  
Rambukkana.
3. M. A. W. Kumudini,  
27/2, Medial Road,  
Ratmalana.
4. N. R. N. Fernando,  
661/A, Kandaliyaddapaluwa,  
Ragama.
5. B. Sarath,  
428/9, Keselwatte,  
Gonahena,  
Kadawatha.
6. D. M. K. G. A. Dasanayake,  
Bathalawatte,  
Pilihudugolla,  
Naula.

7. S. B. Tennakoon,  
No. 91/B, SiriJinaruwan Mw,  
Ranawana, Illukwatte,  
Pilimatalawa.
8. H. G. D. N. Prasanna,  
1029 A, Kottawa East,  
Pannipitiya.
9. C. Abeygunasekare,  
Piyumini,  
Pallemulana,  
Medamulana.
10. S, Weerasinghe,  
7/6, Mawathagama,  
Homagama.
11. K. P. Samaraweera,  
96/5, Urapola Road,  
Dikkanda,  
Waturugama.
12. H. M. A. Jayantha Kumara,  
91, Luwis Mawatha,  
Kelaniya.
13. H. G. A. M. S. Weerasinghe,  
No. 117, Elhena,  
Ketawala  
Leula.
14. M. A. Chandrasena,  
No. 79/B, Damayanthi Stores,  
Main Street,  
Pelmadulla.

15. A. J. R. Anura,  
109/04, Kopiwatte,  
Mahara, Kadawatha.
16. B. B. Sudubanda,  
6/4, Nithulatenna,  
Kundasale.
17. D. K. S. S. Disanayake,  
160, Medagedara,  
Vitharandeniya.
18. M. W. W. B. Abeykoon,  
204/A, Ratmaldeniya,  
Pannipitiya.
19. J. H. S. Disanayake,  
Mahaowita,  
Palatuwa.

**PETITIONERS**

**Vs.**

1. Employees' Trust Fund Board,  
Labour Secretariat,  
Colombo 5.
2. Sriyan De Silva Wijeratne,  
Chairman,  
Employees' Trust Fund Board,  
Labour Secretariat,  
Colombo 5.
3. Neil Umagiliya
4. Ariyasena Gallage

5. K. D. Ranasinghe
6. R. A. L. Udaya Kumara
7. E. A. Ekanayake
8. Jude Dinal Peiris
9. Leslie Devendra
10. W. M. Nurajith Singh

The 3<sup>rd</sup> to 10<sup>th</sup> Respondents, all of:  
The Board of Directors of Employees' Trust  
Fund Board, Labour Secretariat,  
Colombo 5.

11. Assistant General Manager (Administration  
and Human Resources),  
Employees' Trust Fund Board,  
Labour Secretariat,  
Colombo 5.
12. Dr. M. K. C. Senanayake,  
Director General,  
Department of Management Services,  
3<sup>rd</sup> Floor, Ministry of Finance,  
The Secretariat, Colombo 01.
13. S. R. Attygalle,  
Secretary to the Treasury,  
Ministry of Finance  
The Secretariat, Colombo 01.

## **RESPONDENTS**

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

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

**Counsel:**

Shantha Jayawardena instructed by Ms. Hiranya Damunupola for the Petitioners.

Manohara Jayasinghe, DSG for the Respondents.

**Written submissions tendered on:**

16.06.2023 by the Respondents

**Argued on:** 29.03.2023

**Decided on:** 24.10.2023

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

The Petitioners joined the Employees' Trust Fund Board (the 1<sup>st</sup> Respondent Board) at different levels/positions at different times and after serving for over 15 years, by the date of the institution of this action, they were in managerial positions in Grade III. The 1<sup>st</sup> Respondent Board was established under the Employees' Trust Fund Act, No. 46 of 1980. The Department of Management Services in the General Treasury issued the Management Service Circular No. 30/2006 on 22.09.2006 (marked as P-12) to regularize salaries of the employees in Public Corporations, Statutory Bodies and Fully Owned Government Companies and in terms of P-12 upon the recommendation of the Salaries and Cadre Commission the 1<sup>st</sup> Respondent Board reclassified the Petitioners in the posts of Junior Managers for which the relevant Salary Code is JM 1-1. The Department of Management Services of the Ministry of Finance by the letter dated 22.11.2006 (marked as P-13) approved the new salary structure of the employees in the 1<sup>st</sup> Respondent Board in terms of P-12 (page 2 of the annexure attached to Page 13). Nevertheless, by the P-12 the employees of other Public Corporations and Statutory Boards who were paralleled to the Petitioner's Salary Scale and the Grade before P-12

was issued were placed in the posts of Middle Management for which the Salary Code is MM 1-1. To establish the said fact, the Petitioners have tendered to Court the letters issued by the Department of Management Services of the Finance Ministry to the State Printing Corporation and Plantation Ministry regarding the reclassification of salary structure applicable to the employees in those institutions in terms of P-12 (marked as P-14(a) and P-14(b)).

The Petitioners were formally informed by the 1<sup>st</sup> Respondent Board in 2013 by P-15 that they were placed in the JM 1-1 Salary Code in terms of P-12. The Petitioners complained to the Labour Commissioner that they were placed in a lower Salary Code than the Salary Code in which they should be placed. The Labour Commissioner after conducting an inquiry held that by placing the Petitioners in JM 1-1 Salary Code they are demoted and as a result, they would not be entitled to the other benefits which they are entitled to (P-16). Even though the Petitioners drew the attention of the Chairman of the 1<sup>st</sup> Respondent Board and the Treasury about their grievance (P-17(a) and P-17(b)), they did not receive a favourable response.

In the meantime, between 2010 to 2018 Petitioners were promoted to the posts of Manager Grade II for which the applicable Salary Code is MM 1-3. On 01.03.2019, the 12<sup>th</sup> Petitioner was promoted to the post of Assistant General Manager (Legal) and placed in the Salary Code of MM 1-1.

On 15.02.2018 the Ministry of Finance issued Trade and Investment Department Circular No. 01/2018 (P-21) regarding the issuance of Motor Vehicle Permits on concessionary terms (the vehicle permits). After P-21 was issued, the Chairman of the 1<sup>st</sup> Respondent Board by letter marked as P-22 dated 15.07.2019 informed the Salaries and Cadre Commission about the injustice caused to the Petitioners when reclassifying

the employees in the 1<sup>st</sup> Respondent Board in terms of the Circular marked as P-12. The Petitioners in or about November 2019 applied for permits (P-23(a) – P-23(s)) in terms of the Circular marked as P-21. Then the Assistant General Manager (Administration & Human Resources) of the 1<sup>st</sup> Respondent Board (the 11<sup>th</sup> Respondent) informed the Petitioners by letters dated 20.01.2020 (marked as P-24(a) to P-24(s)) that in terms of the Circular P-21, the Petitioners are not entitled to the vehicle permits since they have not completed 12 years' service period in a position in the Salary Code of 'MM' or 'HM'. On that basis, the 11<sup>th</sup> Respondent refused to recommend/forward the Petitioners' applications for vehicle permits to the Secretary to the Treasury (the 13<sup>th</sup> Respondent).

The Petitioners placed material before the Court that prior to the issuance of Circular No. 30/2006 marked as P-12, the vehicle permits had been issued to the employees of the 1<sup>st</sup> Respondent Board amalgamating the service periods in Grade III and the Salary Code MM 1-3. Under the above-stated circumstances, Petitioners argue that the refusal of the 1<sup>st</sup> to 11<sup>th</sup> Respondents to forward/recommend the Petitioner's applications for vehicle permits to the 13<sup>th</sup> Respondent or refusal of issuing the vehicle permits by the 13<sup>th</sup> Respondent is *Ultra Vires, inter alia*, for the following reasons.

- (a) It is in frustration of Petitioners' legitimate expectation;
- (b) It is unreasonable and irrational;
- (c) The Respondents had failed to take into account the relevant facts;
- (d) It is contrary to the Circular marked as P-21;

Therefore, the Petitioners seek the following substantial reliefs.

- (a) grant and issue orders in the nature of Writ of Certiorari quashing P24(a) to P24(s);

- (b) grant and issue of an order in the nature of Writ of Mandamus directing the 1<sup>st</sup> to 11<sup>th</sup> Respondents to recommend the Petitioners' applications for vehicle permits on concessionary terms and forward the same to the 13<sup>th</sup> Respondent;
- (c) grant and issue an order in the nature of Writ of Mandamus directing the 1<sup>st</sup> to 13<sup>th</sup> Respondents to consider the Petitioners' applications for vehicle permits on the premise that the Petitioners were in the Senior Management Category from the date of promotion to Grade III;
- (d) grant and issue an order in the nature of Writ of Mandamus directing the 1<sup>st</sup> to 13<sup>th</sup> Respondents or one or more of the Respondents, to grant vehicle permits to the Petitioners;

The Petitioners tendered to Court Treasury Circulars No. 866 issued on 22.02.1999 (marked as P-8) and No. 866(1) issued on 23.06.1999 (marked as P-9) regarding the issuance of vehicle permits to Government Servants at that time on concessionary terms. Responding to a letter sent by the Chairman of the 1<sup>st</sup> Respondent Board to the Department of Fiscal Policy and Economic Affairs for clarification of P-8, by letter dated 14.12.1999 the Department of Fiscal Policy and Economic Affairs has informed the Chairman of the 1<sup>st</sup> Respondent Board by letter dated 14.12.1999 marked as P-11 that the Treasury has decided to extend the eligible level up to Executive Grade III of the 1<sup>st</sup> Respondent Board for the purpose of importation of vehicles on concessionary terms as per Circulars marked as P-8 and P-9.

Thereafter in 2016, the Ministry of Finance issued Trade and Investment Policy Department Circular No. 01/2016 dated 14.07.2016 (P-20) regarding the importation of vehicles on concessionary terms. Section 1.9 of P-20 applies to the officers in the 1<sup>st</sup> Respondent Board regarding the issuance of vehicle permits and accordingly, the officers who have completed 12 years of active service period and confirmed in a



“Senior Level” executive position in State Corporations or Statutory Institutions are eligible to obtain vehicle permits on concessionary terms. Even though the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> Petitioners have completed 12 years in Grade III and applied for permits in terms of P-20, their applications were rejected without giving reasons.

In 2018 again the Minister of Finance issued the Trade and Investment Policy Department Circular dated 15.02.2018 bearing No. 01/2018 (marked as P-21) regarding the issuance of vehicle permits and Section 1.9 of P-21 applies to the officers in State Corporations and Statutory Bodies. Section 1.9 thus provides;

*“Officers who have completed 12 years’ active service period in State Corporations or Statutory Bodies and confirmed at “Senior Level” executive positions as defined in Schedule III of the Management Services Circular No. 02/2016 of 25.04.2016 within the cadre approved by the Department of Management Services.”*

After issuance of the Circular marked as P-21, 1<sup>st</sup> to 14<sup>th</sup> and 19<sup>th</sup> Petitioners applied for vehicle permits since they have completed 12 years to the date of issuance of P-21 from the date which they were promoted to Grade III. Nevertheless, those applications were rejected without any reasons being given. The Chairman of the 1<sup>st</sup> Respondent Board by letter dated 15.07.2019 marked as P-22 informed the Secretary of the Salaries and Cadre Commission about the injustice caused to the Petitioners due to the erroneous reclassification of employees in the 1<sup>st</sup> Respondent Board in terms of the Management Circular No. 30/2006 marked as P-12. Thereafter all the Petitioners, in or about November 2019 applied for vehicle permits (P-23(a) and P-23(s)). In respect of those applications, the 11<sup>th</sup> Respondent by the letters dated 20.01.2020 marked as P-24(a) to P-24(s) informed the Petitioners that in terms of Circular marked as P-21, the

Petitioners ought to complete 12 years in positions belonging to the Salary Code of “MM” or “HM” to be eligible for vehicle permits.

The Petitioners contend that the 1<sup>st</sup> to 11<sup>th</sup> Respondents failed or refused to recommend Petitioners’ applications for vehicle permits and/or failed or refused to forward their applications to the 13<sup>th</sup> Respondent. The Petitioners drew the attention of the Court to the fact that before P-12 was issued, under the previous Circulars regarding the vehicle permits, 12 officers in the 1<sup>st</sup> Respondent Board had been issued with vehicle permits considering and amalgamating their service periods in Grade III and Salary Scale of MM 1-1 (P-25 and P-26).

The section which applies to vehicle permits of the Petitioners in this Writ Application is Section 1.9 of the Circular dated 15.02.2018 of the Trade and Investment Policy Department of the Ministry of Finance marked as P-21. According to Section 1.9, the executive officers who have completed 12 years of active service in State Corporations or Statutory Bodies at the “Senior Level” as defined in Schedule III of the Management Services Circular No. 02/2016 of 25.04.2016 are eligible for the vehicle permits. That Circular is tendered to Court by the Respondents with their written submissions on the direction of the Court. Even though it is a relevant document for the case of the Petitioners, they had failed to furnish it at the institution of this action. According to item 4 of Schedule III of the said Circular, the “Senior Level” which is expected to be eligible in terms of the Circular marked as P-21 for vehicle permits is Middle Management (“MM”) or Higher Management (“HM”) levels. Nevertheless, the Petitioners belong to the Junior Management (“JM”) category and the officers in that category are not entitled to the vehicle permits. Therefore, the refusal of the 1<sup>st</sup> to 11<sup>th</sup> Respondents to recommend the Petitioner’s applications for vehicle permits to the 13<sup>th</sup>

Respondent for the reason that they had not fulfilled the requirements in Circular No. 01/2018 marked as P-21 is legal and not *ultra vires* as argue by the Petitioners.

The Petitioners also argue that the decision not to issue vehicle permits violates their legitimate expectations. That argument is based on the fact that, in terms of the Circulars issued before P-21 regarding the vehicle permits the officers of the 1<sup>st</sup> Respondent Board who were in the same salary scale which the Petitioners are now in, were issued with vehicle permits and as a result of changing the conditions of the Circular by P-21 they became ineligible to the vehicle permits. If the expectation of the Petitioners is legitimate only, they could have argued that the decision not to issue vehicle permits is a violation of their legitimate expectation.<sup>1</sup> Nevertheless, as per Circular marked as P-21, the Petitioners are not entitled to vehicle permits even though they were eligible for vehicle permits under the old Circulars. The Petitioners do not argue that the decision or action to change the conditions in the previous Circulars and issue Circular marked as P-21 is illegal or an abuse of power.

Priyantha Jayawardena, PC. J. observed in the case of *Ginigathgala Mohandiramlage Nimalsiri Vs Colonel P.P.J. Fernando and Six Others*<sup>2</sup>, that,

*“an expectation is considered to be legitimate where it is founded upon a promise or practice by the authority that is said to be bound to fulfil the expectation. Therefore, an expectation reasonably entertained by a person may not be considered as legitimate because of some countervailing consideration of policy or law. Further, clear statutory words override any expectation howsoever founded. **Where an expectation is founded***

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<sup>1</sup> Vasana v. Incorporated Council of Legal Education and Others (2004) 1 SLR 159.

<sup>2</sup> SC FR No. 256/2010, SC Minutes of 17<sup>th</sup> September 2015.

***on a policy and later a relevant change of policy is notified, the expectation founded on the previous policy cannot be considered as legitimate.***” (Emphasis added)

In the case of *Union of India Vs Hindustan Development Corporation*,<sup>3</sup> the Supreme Court of India held that,

***“The court’s jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of ‘legitimate expectation’. A decision denying a legitimate expectation based on a policy or change of an old policy, or in the public interest either by way of G.O., rule or is made by way of legislation does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power.”*** (Emphasis added)

In the case of *W. A. Albert Vs Chief Secretary, Southern Province and 3 Others*<sup>4</sup>, this Court has held that,

*“An expectation whose fulfilment requires that a decision maker should make an unlawful decision, cannot be a legitimate expectation. Thus, it is necessary that the fulfilment of the legitimate expectation, breach of which is complained of, must be within the powers of the relevant public authority.”*

In the case of *Union of India Vs Hindustan Development Corporation* cited above it was held that,

*“As observed in the Attorney General for New South Wales’ case “To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling*

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<sup>3</sup> [1993] Indlaw SC 1085.

<sup>4</sup> C A Writ Application No.401/2015, CA Minutes of 11th October 2016 at Page 11.

*short of a legal right) is too nebulous to form a basis for invalidating the exercise of power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to a denial of a right guaranteed or is arbitrary, discriminatory unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds.... but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."*

Since the Petitioners are not entitled to vehicle permits as a result of amending the Circular on a Cabinet decision, in light of the above-stated legal literature they cannot argue that the decision not to issue vehicle permits to them is a violation of their legitimate expectations and/or compel the Court to issue vehicle permits to them violating the conditions mentioned in P-21.

When the salary structure of the employees in the 1<sup>st</sup> Respondent Board was restructured in terms of P-12, the Petitioners were placed in a lower Salary Code than the Salary Code in which they should be placed and the decision to place them on the lower salary scale had been officially informed to them in 2013 by the 1<sup>st</sup> Respondent Board. Against that act up till this Writ Application was instituted in 2020 in laps of seven years, the only effective step the Petitioners had taken to rectify that was making a complaint to the Labour Commissioner. The said delay of seven years has not been explained by the Petitioners. In *Seneviratne Vs Tissa Bandaranayake and another*<sup>5</sup>, Amerasinghe J. adverting to the question of long delay, commented that,

*"If a person were negligent for a long and unreasonable time, the law refuses afterwards to lend him any assistance to enforce his rights; the law both to punish his*

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<sup>5</sup> 1999 (2) SLR 341 at Page 351.

*neglect, nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”*

Hence, the Petitioners in the case at hand have slept over their rights and have not been vigilant, without undertaking the required measures to have themselves placed in the correct Salary Code they are not entitled to the reliefs prayed for.

Considering all the above-stated circumstances, I hold that the Petitioners are not entitled to the reliefs prayed for in the Petition to this Writ Application and the Application should be dismissed. Accordingly, I dismiss this Writ Application without costs.

Application dismissed.

No costs ordered.

**JUDGE OF THE COURT OF APPEAL**

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

**I agree.**

**JUDGE OF THE COURT OF APPEAL**