

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

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

Court of Appeal Case No.

CA/WRT/0344/2019

1. **R. M. Rajapaksha,**
Randenigama,
Nikawaratiya.
2. **M. A. M. Jayaweera,**
No. 30,
Saman Place,
Rathnapura
3. **W.D. Nevil,**
Deeyagala,
Katugaha Hena,
Nawuththuduwa.
4. **W. M. R. A. Wijesundara,**
No. 269, Bogahaththanna,
Uda Peradeniya,
Peradeniya.
5. **B. U. H. Fernando,**
No. 11/1,
Dias Place,
Panadura.
6. **M. A. Karunarathne,**
Polhena, Udawela,
Agalawaththa.
7. **P. Piyadasa,**
Dapiligoda.
Walpitiyakanda,
Agalawaththa.

8. **K. H. Gunapala,**
Rajagedarawaththa,
Pokuna Mawatha
Aththilgoda,
Galle.
9. **T. T. D. Peiris,**
No. 30/13.
Maligawaththa,
Pilapitiya,
Kiribathkubura.
10. **D. M. Thilakarathna,**
Karanagollawa,
Pihibiyagollawa.
11. **J. H. W.S. Perera,**
"Madusewana",
Panapitiya Road,
Pothupitiya,
Wadduwa.

Petitioners

Vs

1. **Sunil Hettiarachchi,**
Secretary, Ministry of Highways and Road
Development and Petroleum Resources
Development,
8th Floor, Maganeduma Mahamedura,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.
- 1A. **R.W.R.Pemasiri,**
Secretary, Ministry of Roads and
Highways,
"Maganeguma Mahamedura",
Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

2. **J.J. Rathnasiri,**
Secretary, Ministry of Public
Administration, Disaster Management and
Rural Economic Affairs,
Independence Square.
Colombo 07.

2A. **S. Hettiarachchi,**
Secretary Ministry,
Ministry of Public Administration, Home
Affairs, Provincial
Councils and Local
Government,
Independence Square,
Colombo 07.

2B. **J.J. Rathnasiri,**
Secretary Ministry,
Ministry of Public Services,
Provincial Councils and Local Government,
Independence Square.
Colombo 07.

3. **A. Jagath Dias,**
Director General,
Department of Pension,
Maligawatta,
Colombo 10.

4. **Hon. Kabir Hashim,**
Minister of Highways and Road
Development and Petroleum Resources
Development,
8th Floor, Maganeduma Mahamedura
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

4A. **Hon. Johnston Fernando,**
Minister of Roads and Highways,
"Maganeguma Mahamedura",
9th Floor, 216, Denzil Kobbekaduwa

Mawatha,
Koswatta, Battaramulla.

5. **Hon. Ranjith Madduma Bandara,**
Minister of Public Administration, Disaster
Management and Rural Economic Affairs,
Independence Square,
Colombo 07.

5A. **Hon. Janaka Bandara Tennakoon,**
Minister of Public Administration, Home
Affairs, Provincial Councils & Local
Government,
Independence Square,
Colombo 07.

6. **W. L. D. N. Kumara,**
Senior Assistant Secretary,
Ministry of Highways and Road
Development and Petroleum Resources
Development,
8th Floor, Maganeduma Mahamedura,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

6A. **Chanaka P. Welgama,**
Senior Assistant Secretary,
Ministry of Highways,
8th Floor, Maganeduma Mahamedura,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

7. **P. D. S. Wijerathne,**
Additional Secretary (Administration),
Ministry of Highways and Road
Development and Petroleum Resources
Development,
8th Floor, Maganeduma Mahamedura,
Denzil Kobbekaduwa Mawatha
Koswatta,
Battaramulla.

7A. **U.H.C. Priyantha,**
Additional Secretary (Administration),
Ministry of Highways,
8th Floor, Maganeduma Mahamedura,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

Respondents

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

Counsel: Shantha Jayawardena, with Ms. Hirannya Damunupola and
Azra Basheer for the Petitioners.

S. Dharmawardena, ASG with M. Fernando, SC for the
Respondents.

Supported on: 26.06.2023

Written Submissions on: 14.09.2023 by the Petitioners
09.10.2023 by the Respondents

Decided on: 17.10.2023

MOHAMMED LAFFAR, J.

The Petitioners were employed as casual labourers by the Department of Highways. On 01-01-1986, the functions and activities carried out by the Department of Highways had been transferred to the Road Development Authority. Accordingly, the services of all casual and temporary labourers were terminated with effect from 01-01-1985. The Petitioners were paid a sum of Rs. 20,000/- as a bonus payment and they were not paid pension.

Thereafter, in terms of the Public Administration Circular No. 09/2015 (**P6**), the Petitioners made an appeal to the Ministry of Public Administration Local Government and Democratic Governance. On 15-03-2016, a Cabinet Memorandum bearing No. 2016/13 (**P10**) was submitted by the Minister of Higher Education and Highways seeking approval of the Cabinet of Ministers for a one-time payment of Rs. 25,000/= to the workers who lost their jobs when the Department of Highways was abolished and for the allocation of funds for the purpose, whereas on 03-05-2016, the Cabinet refused to recommend the said Memorandum (**P11**). The Petitioners state that on 21-06-2016 (**P14**) the Cabinet approved the Cabinet Memorandum dated 10-06-2016 (**P13**) submitted by the Minister of Public Administration and Management seeking to implement the Public Administration Circular No. 09/2015. The Petitioners further state that the Secretary to the Minister of Higher Education and Highways by letter dated 10-07-2017 (**P17**) instructed the 3rd Respondent (Director General of Pension) to take necessary arrangements to retire those who had a service of 08 years in the Department of Highways with effect from 01-04-2016, and to process a payment of pension amounting to Rs. 10,000/- per month with effect from 01-04-2016. Further, it was recommended to pay a one-time payment amounting to Rs. 50,000/- for the workers who had not completed 08 years of service. The Petitioners state that the 3rd Respondent failed to comply with the instructions stipulated in **P17**. By letter dated 28-02-2019 marked as **P30**, the 6th Respondent, the Senior Assistant Secretary of the Ministry of Highways and Road Development informed the 1st Petitioner that the said Cabinet Memorandum marked as **P10** submitted by the Minister of Higher Education and Highways in this regard has been rejected by the Cabinet on 03-05-2016.

In those circumstances, the Petitioners state that the 1st and 3rd Respondents are under a public duty to implement the Cabinet Decision marked as **P14** and are acting unreasonably, arbitrarily, in frustration of the Petitioners' legitimate expectation and *ultra-vires*. Hence, the Petitioners are seeking *inter-alia* a Writ of *Certiorari* to quash the decision reflected in **P30**, a Writ of

Mandamus directing the 1st and 3rd Respondents to take necessary steps to retire the Petitioners with effect from 01-04-2016 in accordance with **P17** and a Writ of *Mandamus* directing the 1st and 3rd Respondents to act in accordance with the Cabinet Decision reflected in **P14** and implement the same.

As per the Cabinet Memorandum pertaining to the winding up of the Department of Highways dated 15-08-1985 marked as **6RA2**, the Petitioners were paid a sum of Rs. 20,000/- each as compensation. The Petitioners who received compensation had also signed the documents marked 6RA3, consenting that this is a full and final payment. It is borne out from the document marked as **6RA3**, that the Petitioners, those who are entitled, were paid gratuity payments as well.

Subsequently, on 15-03-2016, a Cabinet Memorandum bearing No. 2016/13 (**P10**) was submitted by the Minister of Higher Education and Highways seeking approval from the Cabinet of Ministers to provide relief to the workers who lost their jobs when the Department of Highways was abolished. By **P11**, the Cabinet Memorandum to provide relief to the said workers was refused by the Cabinet. The Secretary of the Ministry of Public Administration by letter dated 21-03-2018 marked as **R9** requested the Secretary of the Ministry of Highways to inform the Petitioners as to the said decision of the Cabinet. In this scenario, it is abundantly clear that the Petitioners are not entitled to pension or any other relief as the same was not approved by the Cabinet.

The Petitioners are seeking a mandate in the nature of Writ of *Mandamus* directing the 1st and 3rd Respondents to act in accordance with the Cabinet Decision reflected in **P14**. The Cabinet Memorandum dated 10-06-2016 (**P13**) submitted by the Minister of Public Administration and Management seeking to implement the Public Administration Circular No. 09/2015 and the approval granted by the Cabinet to the same is in relation to the persons who were subjected to political victimization, such

decision of the Cabinet is based on policy approval. Hence, it is apparent that the said Circular No. 09/2015, Cabinet Memorandum **P13** and Cabinet Decision **P14** do not relate to the employees (Petitioners) of the Department of Highways. This Court is mindful of the fact that the services of the Petitioners were terminated not due to political victimization but due to the abolition of the Department of Highways. In this respect, it is the view of this Court that the Petitioners are not entitled to seek any relief in terms of the Cabinet Decision marked as **P14**.

The Petitioners are seeking a Writ of *Mandamus* directing the 3rd Respondent to take necessary steps to retire the Petitioners in accordance with **P17**, which is a letter dispatched by the Secretary to the Minister of Higher Education and Highways, instructing the 3rd Respondent (Director General of Pension) to take necessary arrangements to retire those who had a service of 08 years in the Department of Highways with effect from 01-04-2016, and to process a payment of pension amounting to Rs. 10,000/- per month with effect from 01-04-2016. The Deputy Solicitor General appearing for the Respondents vehemently disputing this letter on the footing that Mr. H.M.P. Bandara, the Secretary to the Minister of Higher Education and Highways had no authority to give such a direction to the Director General of Pension. It is pertinent to note that, Mr. H.M.P. Bandara, author of **P17** was released from the Ministry of Higher Education and Highways on 21-11-2016 by letter dated 21-11-2016 marked as **6RA5**, and therefore, Mr. H.M.P. Bandara had no authority to issue the letter marked **P17**. Moreover, it appears to this Court that **P17** is illegal and *ultra-vires* as it is against the Cabinet Decision marked as **P11**. It is to be noted that the public Officers have no authority to give directions to other public Officers or public bodies against the Decisions of the Cabinet. Hence, the Petitioners are not entitled to seek relief in terms of **P17** as well.

The Petitioners are seeking to quash the letter marked as **P30**, by which the 6th Respondent, the Senior Assistant Secretary of the Ministry of Highways and Road Development informed the 1st Petitioner that the said Cabinet Memorandum marked as **P10** submitted by the Minister of Higher Education and Highways has

been rejected by the Cabinet on 03-05-2016. **P30** is not a decision to be quashed by way of a Writ of *Certiorari* but it is only a notification of the Cabinet decision marked as **P11** by the Senior Assistant Secretary of the Ministry of Highways and Road Development to the 1st Petitioner. As such, P30 is not liable to be quashed.

For the foregoing reasons, it is the considered view of this Court that the Petitioners are not entitled to the relief as prayed for in the prayers to the Petition. Thus, the Application is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL