

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

In the matter of an application under Article 140 of
the Constitution in the nature of Writ of Certiorari
and Mandamus.

Ratnapura Dewage Sherlin,

Walmeegoda, Meegahatenna.

PETITIONER

C.A . Application No. 721/2009 (Writ)

Vs.

1. Commissioner of Aurvedic,
Department of Aurveda,
Old Kottawa Road, Nawinna,
Maharagama.
2. Director General of Pensions,
Maligawatte Secretariat,
Colombo-10.
3. The Secretary,
Pradeshiya Sabawa,
Matugama.
4. Hon. Attorney-General,
Attorney-General's Department,
Colombo-12.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Deepali Wijesundera, J

COUNSEL: K.V. Sirisena for the Petitioner.
Yuresha Fernando SC for Respondents

ARGUED ON: 12.09.2013

DECIDED ON: 12.12.2013

GOONERATNE J.

The Petitioner is an Aurveda Doctor (Grade 1) with so many years of experience as pleaded in the petition. Petitioner retired from service on 31.07.2005 after serving the Aurveda Department and local government institution. Her complaint is as regards the calculation of pension and gratuity. Writ of Certiorari is sought to quash determination P9,P10 and P12 and for a writ of mandamus to compel the respondents to pay the pension and gratuity as per documents P8. Documents P9 and P10 are salary conversions pertaining to the petitioner and P12 is the award of pension.

It was the position of the petitioner that by P3 the Director General of Pensions made arrangements to pay a pension and gratuity as per para 7 of the petition. The learned counsel for the petitioner as pleaded in the petition drew the attention of this Court to document P4, P5, P6, P7 and P8 to demonstrate the position of the petitioner as regards several salary conversions, discrepancies and discrepancies between salary conversions in several public administration circulars. She complains that after retirement petitioners salary was drastically reduced , and as a result pension and gratuity was also reduced illegally and arbitrary. By P13 the petitioner explains her position and had appealed to Aurveda Commissioner. Counsel also submits that a complaint was made to the Human Rights Commission (Vide P14, P15 and P16). Document P16 is a recommendation in favour of the petitioner by the Human Rights Commission. Petitioner place much emphasis on document P17 and P18. Petitioners counsel vehemently argued that gratuity and pension need to be calculated and should be paid as in document P8 which is her last drawn salary, and that the matters stated in P9,P10 and P11 are illegal and the acts of the 1st-3rd respondents in this regard is also illegal, capricious and against the law of the country.

At the hearing of this application the learned State Counsel objected to a writ being issued inter alia on the basis of laches. It was the position of the State Counsel that the petitioner has delayed in filing this application and had not given any acceptable explanation for the delay. As such this application should be rejected on laches alone. In the objections of the respondents the following matters are pleaded and this Court is possessed of all those points pleaded therein.

- i. The Petitioner retired with effect from 31st July 2005, whilst serving as an Ayurvedic medical practitioner attached to the Pradeshiya Sabha Mathugama.
- ii. Originally the Pension of the Petitioner was calculated based on the information submitted by the 3rd respondent which was based on PA Circular 9 of 2004.
- iii. Subsequently this has been corrected as it was informed that the applicable circular was the Health Ministry circular 9 of 2003.
- iv. Consequently the Pension of the Petitioner was calculated based on the said Circular 9 of 2003.
- v. The Petitioner has been paid her Pension since 30th July 2005 and at present she is receiving a sum of Rs. 20,695.38 monthly.

Delay defeats equity. The documents sought to be quashed are all dated 2005 and 2006. This application has been filed on or about 23.10.2009. There is an unexplained delay of about 3 years. In *Seneviratne Vs Tissa Dias Bandaranayake* and another 1992 (2) SLR 341 at 345. Per Amerasinghe, J “ If a person were negligent for a long and unreasonable time, the law refuse afterwards to lend him any assistance to enforce his rights..... Law refuses to assist those who sleep over their rights and not vigilant.” Prerogative writs are not to be granted as a matter of course or as a matter of right or as a routine in *Jayaweera Vs Assistant Commissioner of Agrarian Services* 1996 (2) SLR 70/73.

Further the minutes on pension enacts that it does not create absolute rights. The main complaint of the petitioner is that the calculation of pension and gratuity is on an erroneous basis. This Court is not equipped to make corrections on arithmetical calculation or on the basis of arriving at a figure to pay a pension or a gratuity. Such disputed question are not well suited to be considered in writ application. Please see *Thajudeen Vs Sri Lanka Tea Board* and another 1981 (2) SLR 471.

In all the above circumstances we are not inclined to grant relief to the petitioner in this type of application. As such we refuse this application and dismiss this application without costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera, J

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-