

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

Y.M.S.B.Udawela

No. 68 J Bulugahattennewatta,

Yaggahapitiya, Amunugama,

Gunnepana.

And 23 others.

**Petitioners**

**Vs.**

C A Writ Application

No. 500/2010

1. The Secretary,  
Ministry of Public Administration and  
Home Affairs,  
Independent Square, Colombo 7.
2. The Secretary,  
Ministry of Finance and Planning,  
Colombo 01.
3. The Director General  
Department of Agriculture,  
Peradeniya.
4. The Director General  
Department of Pensions,  
Maligawatta Secretariat, Maligawatta,  
Colombo 10.
5. The Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : L.T.B. Dehideniya J.

**Counsel** : Riad Ameen with Maduka perera for the Petitioners.

Yuresha Fernando SSC for the Respondents.

**Argued on:** 26.05.2015

**Written submission filed on:** 30.11.2015 and 01.12.2015

**Decided on:** 30.03.2016

**L.T.B. Dehideniya J.**

The petitioners institute this action seeking a writ of certiorari to quash paragraph 6 and 7 of the Public Administration Circular No. 16/2008 dated 22.08.2008 marked P 13.

The petitioners were officers of the Middle Level Unified Technical Service (MLTS) and later promoted to the Sri Lanka Agricultural Service (SLAGS). The MLTS was thereafter restructured and named as Sri Lanka Technological Service (SLTS). The salary of the members of the SLAGS was always on a higher scale than the SLTS. Time to time the Government has increased the salaries of public services, but maintained the hierarchical structure of it. With the P.A. Circular No.30/99 (1) dated 07.02.2000 marked P 9, the starting salary of the officers in SLTS was made higher than the officers of the SLAGS. After making several representations to the authorities concern, the anomaly was rectified by circular No. 16/2008 dated 22.08.2008 marked P 13, but the arrears were given only from 01.09.2008. The petitioners' argument is although that they were placed above others in hierarchical structure in the service, lesser salary was paid to them from 01.07.1994 to 01.09.2008 and it was not rectified. The Petitioners contention is that the decision to pay the arrears of salary from 01.09.2008 is *ultra vires*, has been made without jurisdiction, arbitrary, unfair, unreasonable and

irrational, illegal, violates legitimate expectations of them, and is in abuse of discretion. They move this Court to issue a writ of certiorari to quash a part of the circular marked P 13 where the arrears had been limited to 01.09.2008. (Paragraph 5 and 6 of the said circular)

The State Counsel raised a preliminary objection that the National Salary and Carder Commission is a necessary party and it has not been made a party to the application. State further objected on the basis that the salary revision and the date of it coming in to operation is a policy matter. The budgetary capacity of the Government is considered by the National Salary and Carder Commission and the effective date has been decided to be the 01.09.2008. State further argued that a part of a circular cannot be quashed.

The learned Counsel for the Petitioner in his written submission submitted a lengthy argument that failure to give reasons to an administration decision makes the decision invalid. He cited several authorities on this point. But in the petition this point was not raised as a reason to quash the impugned part of the circular. There was no decision by any administrative authority, on the representations made by the Petitioners, requesting to give retrospective effect to the said circular, before instituting this action.

The Counsel for the Petitioner submitted two letters marked as CA 1 and CA 2 with the written submissions. These documents relate to the facts. The opposing party was deprived of replying to these documents because it was not tendered with the Petition.

The document marked CA 2 is a letter issued by the Director General of Establishments in response to the representations made by the Petitioners requesting to backdate the effective date of the circular P13. The request has been refused and a reason given in that letter. The reason

is that the National Salary and Carder Commission have observed that it is not necessary to amend the policy decision of the Treasury on the arrears of salary. The Petitioners have not made the National Salary and Carder Commission or its members a party to this application and they were denied the opportunity of explaining as to why they came to that observation.

The Petitioners, from the very beginning knew that the National Salary and Carder Commission is in authority in salary restructuring of the public servants. The Petitioners made several representations to the commission on salary anomaly. The letter P10 (a) is address to the Salary and Carder committee. The letter P10 (e) is a document produced by the Petitioners. It says that the anomaly was referred to the Salary and Carder committee for recommendations. The letter P10 (i) is a letter addressed to the Salary Commission by the Petitioners' association. P11 (b) also says that the issue was referred to the Salary Commission for their attention. P12 (a) is a letter send to the Salary and Carder Commission through their Attorney at Law. All these correspondence establish that the Petitioners were aware of the fact that the Salary and Carder Commission is the authority that recommends the salary revision. If it is only the Respondents that are in authority, it is not necessary for the Petitioners to make representations to the Salary and Carder Commission and its predecessors, seeking redress. The Petitioners knowingly and willingly avoided naming the Salary and Carder Commission as a party to this application. Under these circumstances, not naming the National Salary and Carder Commission and its members as a party is fatal.

The learned Counsel for the Petitioners cited the cases of *Gnanasambathan v. Rear Admiral Perera and others* [1998] 3 Sri L R

169 and *P.Karunaratne v. Commissioner of Co-operative Development and Another* 79 ii NLR 193 and submitted that the necessary party in a writ application is the person/authority whose exercise of power is sought to be quashed. In the instant case it is the National Salary and Carder Commission is the authority which decides and recommends the salary structure of Government employees to the relevant departments. Therefore it cannot be argued that the National Salary and Carder Commission is not a necessary party.

There was a salary anomaly and it was rectified. The issue is whether the Petitioners are entitled to the arrears of salary from the date of restructuring the MLTS to establish SLTS *i.e.* 01.07.1994. The circular P13 restricted it to 01.09.2008. The Respondents say that it is a policy decision of the Government. The Petitioners argument is that even a policy decision is amenable to judicial review. If there is a fundamental right violation, it may be subject to judicial review as observed by Justice Mark Fernando in case of *Mundy v. Central Environmental Authority SC Appeal 58/2003 S.C. Minutes 20.01.2014* referring to the case of *Perera v. Edirisinghe [1995] 1 Sri L R 148, 156*. This being a writ application, unless the necessary parties are before Court, any administrative decision cannot be reviewed.

Under these circumstances, I dismiss this application.

I order no costs.

Judge of the Court of Appeal.