

**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 *Certiorari* and  
*Mandamus* under article 140 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.**

Ferial Ismail Ashraff  
No. 399/1,  
Thimbrigasyaya Road,  
Colombo 05.

**Petitioner**

**CA Writ 120/2015**

**Vs,**

1. W.B,D dassanayake  
Secretary General of Parliament.  
Parliament of Sri Lanka  
Sri Jayawardenapura,  
Kotte
2. K.A.Rohanadeera  
Additional Secretary General of Parliament.  
Parliament of Sri Lanka  
Sri Jayawardenapura,  
Kotte
3. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before : Vijith K. Malalgoda PC. J (P/CA) &  
S. Thurairaja PC. J**

**Counsel : Kushan D'Alwis PC with Jayaruwan Wijayalath Arachchi for the Petitioner  
N. Wigneshwaran SSC for the Respondents**

**Order on : 28<sup>th</sup> February 2017**

## Order

### **S.Thurairaja PC J**

This is a petition filed by the petitioner seeking writ of certiorari, writ of mandamus and writ of prohibition against the Secretary General of Parliament and Assistant Secretary General of Parliament regarding the payment of her pension.

The petitioner and the respondent are in total agreement of the following facts:

- i. The petitioner is the wife of Late Mr. Mohamed Hussain Mohammed Ashraff.
- ii. Late Mr. Mohamed Hussain Mohammed Ashraff was elected and served in the 2<sup>nd</sup> and 3<sup>rd</sup> Parliaments of the Democratic Socialist Republic of Sri Lanka in the capacity of a Member of Parliament and also a Cabinet Minister.
- iii. Late Mr. Mohamed Hussain Mohammed Ashraff died on the 16<sup>th</sup> of September 2000.
- iv. As per the Parliamentary Pensions Law No 01 of 1977 as amended he was entitled for pension.
- v. Due to the death of Late Mr. Mohamed Hussain Mohammed Ashraff his wife the petitioner became entitled to the pension and the said pension was paid to her till the issuance of P6.
- vi. The petitioner was elected to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Parliaments of Democratic Socialist Republic of Sri Lanka since 18/10/2000 to 8/04/2010.
- vii. The Petitioner served the Parliaments as a Member of Parliament and as a Cabinet Minister.
- viii. As per the Parliamentary Pensions Law of No 01 of 1977 as amended the petitioner also qualified to receive pension.

On the 9<sup>th</sup> of December 2013 the 2<sup>nd</sup> respondent Assistant Secretary General of Parliament had informed the petitioner, who was then serving as the High Commissioner of Sri Lanka in Singapore, that she can receive only one pension as per Section 7B of the Parliamentary Pensions Law (Amendment) No 01 of 1982.

On aggrieved with the said communication which is marked as P6 and attached to the petition, the petitioner had come before this court to establish a right/entitlement of two pensions namely her pension as well as widow's pension through her husband Late Mr. Mohamed Hussain Mohammed Ashraff.

The Parliamentary Pensions Law of No 01 of 1977 originally had an introductory note as follows.

*"A LAW TO PROVIDE FOR THE ESTABLISHMENT OF A PENSION SCHEME FOR MEMBERS WHO HAVE SERVED THE LEGISLATURE FOR A CERTAIN PERIOD AND PROVIDE FOR ALL MATTERS CONNECTED THERE WITH OR INCIDENTAL THERE TOO"*

This Act was presented to the National State Assembly (as then) on the 21<sup>st</sup> of December 1976 I am in possession of the official Hansard Report which was submitted by the respondent marked R2 and submitted with the objections. It was submitted by many members, that some of the former members of the Parliament and some widows of the

former members of Parliament were in dire financial straits therefore the the Parliamentary Pensions Law was brought to take care of the members who served the public.

Originally the law was introduced to provide pension for the members who had served for a stipulated period in the Parliament and not for their widow and children. To confirm the above observation, I refer the comment made by the speaker at the Hansard Report chapter No. 21 (2) dated 21<sup>st</sup> December 1976 at page 2274. *"The widow of the late Mr. V. A. Alegacone and the late Mr. S. M. Rasamanickam brought to my notice at the death of their husbands they have been in dire financial straits but this bill does not provide for that purpose.* (Emphasis added)

At this stage I wish to refer Section 4 of the said original Act.

*"Any person who has served as a Member of the Legislature for a minimum period of five years in the aggregate shall be entitled to monthly payment of a pension amounting to one-third of the substantive monthly allowance currently payable to a Member of the National State Assembly and a maximum of two-thirds of such substantive monthly allowance if he has served an aggregate period of fifteen years or more as such Member:*

*Provided that any person who has served as a Member of the Legislature for a period of more than five years but less than fifteen years shall receive a monthly proportionate pension determined in accordance with a table of payment to be prepared by the Speaker with the concurrence of the Minister in charge of the subject of Finance."*

It is also necessary to consider Section 7 of the original Act.

*"Where a Member of any Legislature vacates his seat in such Legislature under any written law for the time being in force, other than by resignation or the dissolution of such Legislature, the period of his service as a Member in such Legislature from the date of his election to such Legislature up to the date of such vacation shall not be taken into account for the purpose of the computation of any pension under this Law."*

The said Law was amended in 1979 by Parliamentary Pensions Amendment Act of No 50 of 1979 which amended Section 13, which is not directly relevant to the present situation. (This is mentioned for completeness)

The one of the most important amendment to the present application was brought in 1982 by way of the Parliamentary Pensions (amendment) Act No 01 of 1982.

The long title was amended as follows:

*"A PENSION SCHEME FOR MEMBERS WHO HAVE SERVED THE LEGISLATURE FOR A CERTAIN PERIOD AND THEIR WIDOWS"* (Emphasis added)

Two new sections namely Section 7A and 7B were introduced after Section 7 of the principle Act. It is reproduced below for easy reference.

Section 7A.

*(1) On the death of a Member of the Legislature who is entitled to a pension under this Law, the widow of such Member shall receive such pension. Such pension shall be an amount equal to the amount payable to such Member as pension at the time of his death.*

*(2) The pension payable under subsection (1) shall be paid only during the lifetime of such widow, or where such widow remarries, until the date of such remarriage.*

Section 7B.

*(1) No person shall receive more than one pension payable under this Law.*

*(2) Where a person becomes entitled to more than one pension under this Law such person shall elect which pension shall be paid to him and inform the Secretary-General of Parliament of such election."*

Once again in 1985 the said principle Act was amended by Parliamentary Pensions No. 33 of 1985 which states as follows

Section 7B of the principal enactment, is hereby amended as follows: -

*(a) by the substitution in subsection (2) of that section, for the words "Where a person ", of the words and figures "Subject to subsections (3) and (4), where a person" ; and*

*(b) by the addition, immediately after "subsection (2), of the following subsections:*

*"(3) Every person who is entitled, on the day on, which this subsection comes into force, to the payment of a pension under subsection (1) and subsection (2) of section 4, shall elect the pension which shall be 'Paid to him within three months of, the date on which this subsection comes into force and. inform the Secretary-General of Parliament of such election,*

*"(4) Every person who becomes entitled, after the coming, into force of this subsection, to the payment of a pension under subsection (1) and subsection (2) of section 4 shall elect the pension which shall be paid to him within three months of his becoming entitled to the payment of pensions under both' those subsections and inform' the Secretary-General of Parliament, of such section,*

*(5) Every election made under subsection, (3) or subsection (4) shall 'be final, except in the 'case of a Member of the Legislature' who alter' having made an election under either of those 'subsections becomes entitled to the payment of a pension calculated at a higher rate by virtue of 'his becoming the holder of an office set out in the Schedule to this Act after the date of his making such election"*

The Parliamentary Pensions Law was again amended by the Parliamentary Pensions Act No. 47 of 1990. Accordingly the long title was amended as follows:

*"A PENSION SCHEME FOR MEMBERS WHO HAVE SERVED THE LEGISLATURE FOR A CERTAIN PERIOD AND THEIR WIDOWS AND **CHILDREN AND**" (emphasis added)*

Section 4 was amended as follows:

*Section 4 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and substitution of the following subsection therefor:"*

*" (2) Any person who, during his period of service as a Member of the Legislature, has held any one or more of the offices set out in the Schedule to this Act, for a minimum period of five years in the aggregate, shall"*

*(a) If he has held only one such office or more than one payment of a pension amounting to one-third of the basic salary currently payable to the holder of such office; or*

*(b) if he has held more than one such office, and the salary payable to the holder of one such office is higher than the salary payable to the holder or holders of the other such office or offices, he shall be entitled to a monthly payment of a pension amounting to one third of the basic salary currently payable to the holder of the highest paid of such offices, and*

Section 7A was replaced by the following section:

*7. Section 7A of the Principal enactment is hereby repealed and the following section substituted therefor:"*

*7A.*

*(1) On the death of a Member of the Legislature who is entitled to a pension under this Law, the widow of such member, or where the spouse of such member has predeceased him, the children of such member shall receive such Pension. Such Pension shall be an amount equal to the amount payable to such member as pension at the time of his death.*

*(2) The pension payable under subsection (1) to the children of a Member of the Legislature shall"*

*(a) if there is only one child of such, Member entitled to such pension, be paid in its entirety to such child;*

*(b) if there is more than one child of such Member entitled to such pension, be apportioned among them in equal shares.*

*(3) For the purpose of subsection (1), any person who has served as a Member of the Legislature for a period of less than five years in the aggregate and whose death is certified by the Attorney-General on material furnished to him, to have been caused by an act which would in his opinion constitute an offence under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 shall be deemed to have served as a Member of the Legislature for a minimum period of five years and entitled to a pension under this Law at the time of his death.*

*4) The pension payable under subsection (1)-*

*(a) to the widow or spouse of a Member of the Legislature, shall cease upon the death or remarriage of such widow or spouse whichever occurs earlier ; and*

*(b) to the child of a Member of the Legislature, shall cease upon such child attaining the age of twenty-one years or upon his marriage whichever occurs earlier.*

*(5) On the death or remarriage of the widow or spouse of a Member of the Legislature entitled to a pension under this Law, this Law, to such widow or spouse at the time of her or his death or remarriage. The Pension payable under this subsection to the children of a Member of the Legislature shall"*

*(a) if there is only one child of such Member entitled to such pension, be paid in its entirety to such child;*

*(b) If there is more than one child of such Member entitled to such pension, be apportioned among them in equal shares.*

*(6) Subject to the provisions of sub- section (5), the pension payable under sub section (5) to a child of a Member of the Legislature shall cease upon such child attaining the age of twenty-one years or upon his marriage, whichever occurs earlier.*

*(7) Notwithstanding the preceding provisions of this section, where a Medical Board comprising three medical officers appointed by the Director of Health Services determines that a child, who is entitled to receive a pension under subsection (1) or subsection (5), suffers from such physical or mental disability as renders him incapable of earning his livelihood, such child shall be entitled to receive such pension, calculated in the manner referred to in subsection (1) or subsection (5), during his life time, (sic)*

*(8) For the avoidance of doubt it is hereby declared that a child legally adopted by a Member of the Legislature shall be treated as a child of that member for all purposes of this law."*

The pertinent question before this court is the meaning that "no person shall receive more than one pension payable by this law" (section 7B (1))

Counsel for the petitioner submits that the petitioner was paid pension under section 7 while she was serving as a member/ cabinet minister of the Parliament, in addition to her salary/remuneration/allowance. Presently she also qualified under section 4 & section 7 of the said Act to receive a pension. Therefore she is entitled for two pensions.

Therefore the petitioner submits that she has a vested right to receive the said pension cannot be taken away unless it is expressly and clearly stated.

In this regard the attention of court is respectfully drawn to, **The Interpretation of Statutes** by N. S. Bindra (8<sup>th</sup> Edition) at page 1039, which reads as follows;

*"Vested right- A right is said to be vested when the right to enjoyment, present or prospective has, has become the property of some particular person or persons as a present interest independent of a contingency. It is a right which cannot be taken away without the consent of the owner. Now what exactly is a 'vested right', which*

*cannot be taken away even by the legislature unless it manifests its intention of doing so in express terms or by necessary implications? A right is said to be vested when the right to enjoyment, present or prospective has, has independent of a contingency. It is a right which cannot be taken away without the consent of the owner. Vested rights can arise from contracts, from statutes and from operations of law."*

The prohibition under section 7B (1) does not apply for this type of cases. It is applicable for a person who had the selection under section 4 of the said Act. Briefly, an elected member been appointed as a prime minister, speaker, minister of the cabinet ministers, leader of the opposition, minister appointed under Article 45 of the constitution, deputy minister, deputy speaker and chairman of committees or deputy chairman of committees.

In the present case, the petitioner as informed by P6 had a selection between pension for the period served as a cabinet minister and pension for the period served as a member. The pension amount was Rs.25223.38 or Rs.25979.76 respectively.

The selection according to the petitioner under section 7 was referring to the above selection and it has nothing to do with getting two pensions.

The petitioner submits, that subsection 1 of Section 7B should not be read and /or construed in isolation. It is submitted that a part of statute should be read and/or interpreted in such way to reconcile all parts of a statute.

Para 22: in this regard the attention of court is respectfully drawn to **The Interpretation of Statutes by N.S.Bindra (8<sup>th</sup> Edition) at page 503**, which reads as follows;

"it is well known rule of construction that every attempt should be made to harmonizes different parts of the statute and that each part should be construed so as to expound every other part of the statute....

....The section of an enactment should be so construed as not to be inconsistent with each other. They should be read in such a manner that they are reconcilable with each other"

Further at page 504;

"the sub section of a section of the Act must be read as parts of an integral whole and as being inter-dependant so that an attempt should be made in construing them to reconcile them if it is reasonably to do so, and avoid repugnancy."

It is evident by the said Act that the pension scheme for the Parliamentarians is not similar to the scheme of public servants of this country. The Parliamentarians enjoy a non-contributory pension. Further the qualifying period to receive a pension for the Parliamentarians is much lesser than the public servants. It is also noted that the receivable amount of pension also is different from public/government servants/officials.

The respondent presents their case as follows:

*"Para 12*

*From independence until 1977 members of the legislature of Ceylon/ Sri Lank were not entitled to pension.*

*Para 13*

*Pension was introduced by the Parliamentary Pensions Law of No 01 of 1977, which was passed, as stated in its long Title, to establish, 'A Law to provide for the establishment of a Pension Scheme for members who have served the legislature for a certain period and to provide for all matters connected therewith or incidental thereto."*

*Para 14*

*It is evident that there were no provisions in the original enactment with regard to the entitlement of pension to the widow (or widower) of a Parliamentarian. The Legislature specifically intended to give a pension only to the members of Parliament as evinced by the Hansard dated 21 December 1976 (R2), wherein the speaker, expressly recognized that there is no provision in the bill for widows.*

*Para 15*

*The Parliamentary Pensions Law provided that members who had served a minimum of five years in the legislature would be entitled to a non-contributory pension. As evident from the Parliamentary Debate contained in Hansard (R2), Parliamentary Pension is not comparable to the pension received by Public Servants and entitlement thereto is strictly in terms of the Parliamentary Pensions Law.*

*Para 16*

*The Parliamentary Pensions Law was there after amended by Act No. 50 of 1979 (R3). The sections that were amended thereby are not in issue in this application and are not discussed.*

*Para 17*

*The Parliamentary Pensions Law was further amended by Act No. 1 of 1982 (R4), whereby, inter alia, the following amendments were made;*

- a. The Long Title of the Law was amended to read 'A Pension Scheme for members who have served the Legislature for a certain period and their widows,*
- b. Section 2 of the Law was amended to read, 'there shall be established a non-contributory pension scheme for the grant of pensions who have ceased to be Members of the legislature and the widows of such persons';*
- c. Section 7A, which reads 'On death of a Member of the Legislature who is entitled to a pension under the law, the widow of such Member shall receive such pension.....'*



- d. Section 7B (1), which reads, "No person shall receive more than one pension payable under this law." And Section 7B (2) which reads "Where a person becomes entitled to more than one pension under this law such person shall elect which pension shall be paid to him and inform the secretary-General of Parliament of such election," were also introduced.

*Para 18*

*Thus it can be observed that the limitation on a person to draw more than one pension under the Parliamentary Pensions Law was introduced along with the provisions that extended the pensions to widows, evincing the clear legislative intent to ensure that a person could not draw his or her pension as well the pension of his or her deceased spouse.*

*Para 19*

*It is very important to note that at the time the above amendment was brought in 1982, Parliamentarians were not entitled to pensions for holding offices under different capacities. In other words a person could become entitled to more than one pension only if that person was directly entitled and was entitled as the surviving spouse of the deceased member.*

*Para 20*

*It is therefore unequivocally clear that the reference in Section 7B (1) to the entitlement to more than one pension referred to the direct pension and widow's pension. Thus, a widow was entitled only to one pension - either her own or her deceased spouse's.*

*Para 21*

*The Parliamentary Pensions Law was amended again by Act No. 33 of 1985, (R5) which, inter alia, introduced for the first time a separate pensions for Members of the Legislature who held any of the offices set out in the Schedule to the Act and amended Section 4 of the Parliamentary Pensions Law accordingly. The schedule that was introduced by his amendment included offices such as "Prime Minister", "Speaker", "Minister of the Cabinet of Ministers".*

*Para 22*

*The said Amendment of 1985 also amended Section 7B of the Law by:*

- a. *Amending Section 7B (2) to read as follows: "Subject to subsections (3) and (4), where a person becomes entitled to more than one pension under this Law such person shall elect which pension shall be paid to him and inform the Secretary General of Parliament of such election."*
- b. *Introducing Section 7B (3) which states, 'Every person who is entitled, on the day on which this subsection comes into force, to the payment of a pension under*

*subsection (1) and subsection (2) of section 4, shall elect the pension which shall be paid to him three months of the date on which this subsection comes into force....'*

- c. Introducing Section 7B (4) which states, 'Every person who becomes entitled.... shall elect the pension which shall be paid to him within three months of his becoming entitled to the payment of pensions under both those subsections and inform the Secretary General of Parliament.'*
- d. Introducing Section 7B (5) which states 'Every election made under subsection (3) or (4) shall be final....'*
- e. Introducing Section 7C which states 'Any person entitled to the payment of a pension under this Law shall, in addition to such pension, be also entitled to the payment of all such allowances as are currently paid to public officers on their pensions,'*

#### *Para 23*

*Thus, it can be clearly observed that the limitation on receiving one pension pre dated the 1985 Amendment. Therefore, Section 8B (1) of the Parliamentary Pensions Law could not be intended to deal only with persons entitled to more than one pension under Section 4, but to all situations where a person is entitled to more than one pension.*

#### *Para 24*

*The 1985 Amendment only imposed certain restrictions with regard to the time period within which pensions were required to elect a pension.*

#### *Para 25*

*The Parliamentary Pensions Law was further amended by Act No. 47 of 1990 (R6), which inter alia, extended the benefit of the pension to the children of the deceased Parliamentarian as well. These provisions too are not relevant to this case.*

#### *Para 26*

*In summary, it is clear that the legislative history and the express provisions of the Parliamentary Pensions Law demonstrate that Section 7B (1) refers to widow's pensions as well, and that there is a blanket prohibition on obtaining more than one pension under this special law. "*

Considering the Parliamentary Pensions Law No. 1 of 1977 and its amendments we could see that the Parliament initially concerned about the members only thereafter the widow and subsequently the children. It is also noted that the Parliament was sensitive towards the welfare of the people's representatives; certain amendments are showing the generosity of granting financial assistance to their members.

Parliament is supreme in looking after the welfare of the citizens of this country which includes the members of Parliament perusing the law; it appears that the Parliament at certain times reluctantly approved the payment and other reliefs to the members vide Hansard Chapter 21(2) dated 21<sup>st</sup> December 1976.

Carefully considering all sections especially Section 7B (1) speaks of no person shall receive more than one pension payable under the law.

Subsection 2 speaks of selection under Section 3(3) & 3(4). Subsection 3 speaks of selection to be made within a stipulated area. Subsection 4 payment of pension after the selection.

It becomes necessary to study the evolution of this law. Initially law number 1 of 1977 had only Section 7 which is already stated above and it does not speak of any selection.

The next amendment 50 of 1979 is not relevant to this question in issue.

The next amendment was by 1 of 1982 which changed the long title and included the widows. Section 7A & 7B (1) was introduced. More relevant at this juncture is Section 7B (1) which provides no person shall receive more than one pension payable under this law. Section 7B (2) states as follows: where a person becomes entitled to more than one pension under this law such person shall elect which pension shall be paid to him and inform the Secretary General of Parliament of such election.

At this juncture it is noted that there is no other selection available as provided in the subsequent act No. 33 of 1985 therefore one can easily presume that this section 7B(1) is a standalone section.

Section 7C also receives our attention which was introduced by act No. 33 of 1985 states as follows:

*"Any person entitled to the payment a pension under this Law shall, in addition to such pension, be also entitled to the payment of all such allowances as are currently paid to public officers on their pensions"*

The recipients of pension under the Parliamentary Pensions Law of No 01 of 1977 in addition to their pension they are also entitled to the payment of all such allowances as are currently paid to public officers on their pension.

Comparing available pension schemes for the public servants and the Parliamentarians this appears to be a very generous "care giving" provided by the said statute.

Considering the period of qualification, percentage of payment, inclusion of allowances and payable age, the court is mindful of interpreting the section especially in the light of payment from public funds.

I refer the citation of the Supreme Court in **Tokyo Cement Company Ltd v. Director General of Customs and four others** which states as follows:

"P.P. Craig in his work on Administrative Law (3<sup>rd</sup> Edition 1994 page 52 onwards) specifically deals with the lawful aspect of representations made by public bodies. At the outset he states as follows

"Public bodies often make representations concerning, for example, the interpretation of a statute or the application of legislation to a particular fact

situation. Two principles come into conflict in this area, that of legality and legal certainty.”

In the succeeding discussion of the two principles the author deals with the first principle of legality in relation to the doctrine of ultra vires, is binding on a particular authority. Under the principle of “Legal certainty” the author deals with the hardship which can result from not allowing individuals to rely on representations made to them by public bodies, which have generated legitimate expectations on which they have based their conduct.

The basic proposition that legality should prevail has been stated in the unreported judgment of Lord Green M.R, in the case of Minister of Agriculture & Fisheries vs, Hukin which is cited in [1950] 1 KBD page 148 at 154 – and reads as follows:

“The power given to an authority under a statute is limited to the four corners of the power given. It would entirely destroy the whole doctrine of ultra vires if it was possible for the work done of a statutory power to extend his power by creating an estoppel.”

A legitimate expectation has to be taken in the sense of an expectation which will be protected by law. In the case of Regina vs Secretary of State for Education & Employment, Ex parte Begbie W.L.R 2000 Vol 1 page 115, the Court of Appeal of England held that the ‘courts would not give effect to ‘legitimate expectation’ if it would require a public authority to act contrary to the terms of the statute.””

The court also observes the submission made by both parties that the petitioner was paid a pension while she was getting a salary and perks as a cabinet minister. We invite the Secretary General of the Parliament and the relevant authorities to consider the reasonableness of such payments in the light of formation of this Law.

Considering all, the court is of the view that a person who comes within the scope of this act is entitled only for one pension.

For the reasons stated, the court dismisses the application of the petitioner and awards no cost.

**Application dismissed.**

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J (P/CA)**  
I agree,

**PRESIDENT OF THE COURT OF APPEAL**