

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

In the matter of an application in terms of
Article 140 of the Constitution for a mandate
in the nature of a writ of mandamus

1. Mahathelge Grisilda Mangalika Peiris,
No. 74 De Soysa Road,
Rawathawatta, Moratuwa.
2. Sampathawaduge Benita Lilamani Silva,
No. 38, "Shanthi"
Lady Evelin De Soysa Road,
Idama, Moratuwa.
3. Gampolawaduge Chithrangani
Padmalatha Fernando,
No. 16/2, Deepananda Road,
Willorawatta, Moratuwa.
4. Hettiarachchige Nilakshi Maudra
Fernando,
No. 16/2, Deepananda Road,
Willorawatta, Moratuwa.
5. Mahathelga Theresa Mercy Fernando,
No. 27/1, "Traistar",
Kuduwamaulla Cross Road,
Katubedda, Moratuwa.

Case No. CA 104/2009 Writ

6. Weerawarna Kurukulasooriya Busaduge

Rosli Noyeleen Fernando,

No. 141, Siril Jens Mawatha,

Udahamulla, Panadura.

7. Hewa Marambage Somawathie,

No. 64/9, Pirivena Garden,

Pirivena Road, Ratmalana.

8. Malalage Gunawathie Perera (deceased)

No. 12(24/8), Dudley Senanayake

Mawatha, Panadura

8(a). Jayasinghe Arachchige Udepala Perera,

No. 12(24/8), Dudley Senanayake

Mawatha, Panadura

Substituted Petitioner

9. Kombala Vithanage Pushpa Dhaneshwari

Siriwansa,

No. 29 Fonseka Road,

Lakshapathiya, Moratuwa.

10. Gorakanage Khema Rohini Gajaweera,

No. 65, Weda Mawatha, Gorakana,

Keselwatta.

11. Indrani Bandumathi Nanayakkara,

No. 2/10, Kaduruduwa Road,

Gorakana, Moratuwa.

Petitioners

Vs.

1. Secretary,

Ministry of Education,

Isurupaya,

Battaramulla.

2. J.A.D.L. Hemachandra,

Provincial Director of Education-Western
Province,

Western Province Educational
Department,

76, Ananda Cumaraswamy Mawatha,
Colombo 7.

2A. P.N. Illaperuma,

Provincial Director of Education-Western
Province,

Western Province Educational
Department,

76, Ananda Cumaraswamy Mawatha,
Colombo 7.

3. Jayatissa Karumuni,
Zonal Director of Education, Colombo,
Zonal Education, Office,
Withanage Mawatha,
Colombo 02.

3A. Jayantha Wickramanayaka,

Zonal Director of Education, Colombo,
Zonal Education Office,
Withanage Mawatha,
Colombo 02.

4. M.B.M. Tennakoon,
Zonal Director of Education, - Sri
Jayawardenapura,
Zonal Education Office,
Sri Subhoothi Vidyalaya, Battaramulla.

4A. Asoka Senani Hewage,

Zonal Director of Education, - Sri
Jayawardenapura,
Zonal Education Office,
Sri Subhoothi Vidyalaya, Battaramulla.

5. N.W. Perera,
Zonal Director of Education, - Kaluthara
Zonal Education Office,
Kaluthara.

5A. Priyani Mudalige,

Zonal Director of Education, - Kaluthara
Zonal Education Office,

Kaluthara.

6. P. Kanangara,
Zonal Director of Education, - Piliyandala

Zonal Education Office,

Piliyandala.

6A. P.K.D.U. De S. Gunasekera,

Zonal Director of Education, - Piliyandala

Zonal Education Office,

Piliyandala.

Respondents

Before: Janak De Silva J.

Counsel:

Chrishmal Warnasuriya with Priyantha Herath for the Petitioners

Vikum De Abrew SDSG for the Respondents

Written Submissions tendered on:

Respondents on 28.02.2019

Argued on: 21.01.2019

Decided on: 24.05.2019

Janak De Silva J.

This matter was argued on 21.01.2019 and parties were directed to file written submissions on or before 28.02.2019. When this matter was mentioned on 05.03.2019 no written submissions were available in the docket and the parties were directed to file written submissions on or before 04.04.2019 and judgment was reserved for 24.05.2019. The Respondents had filed written

submissions on 28.02.2019. No written submissions have been filed on behalf of the Petitioners although by motion dated 01.03.2019 further two weeks' time was sought and granted for the written submissions of the Petitioners.

The Petitioners are retired teachers of the Sri Lanka Teachers Service (SLTS) and at the time of their retirement were Class I officers of the SLTS. The SLTS was not in existence when the Petitioners were first appointed as trained/graduate teachers.

The SLTS was created by Gazette notification no. 865/3 dated 3rd April 1995 (P2/R1) (SLTS Minute) and was deemed to have come into force from 06.10.1994. It provided for the establishment of 3 classes in the SLTS, namely Class 3 Grade II, Class 3 Grade I, Class 2 Grade II, Class 2 Grade I and Class I with the entry point at Class 3 Grade II.

When the SLTS Minute became operative there were nearly 200,000 teachers serving in the state sector and they were absorbed to Class 3 Grade II, Class 3 Grade I, Class 2 Grade II and Class 2 Grade I taking into consideration their educational and professional qualifications and the period of service. Part III of the SLTS Minute set out the manner in which the absorption should take place. There were no absorptions to Class I directly.

There is no dispute that the Petitioners were absorbed in to Class II Grade I of the SLTS and placed at the maximum salary step.

Part III paragraph 2 of the SLTS Minute explains the procedure for promotion to Class I for two categories namely:

- (a) Graduate teachers with professional qualifications with 22 years of satisfactory service as trained or graduate teacher
- (b) Trained teachers with 25 years of satisfactory service as a trained teacher

Although the Petitioners contend that they were promoted to Class I with effect from 06.10.1994 since they had obtained sufficient marks to be promoted to Class I in view of their seniority in the service of the SLTS (paragraph 5 of the petition), that position is not supported by any documentation including the letters of appointment of the Petitioners to Class I.

By circular No. 1/99 dated 30.09.1999 the requirements in the SLTS Minute on the promotion to Class I were made non-applicable to those teachers (a) who had been absorbed into Class 2 Grade I (b) who had reached the maximum salary scale in Class 2 Grade I, and (c) were over 50 years of age and all such teachers were promoted to Class I of the service. The Petitioners were promoted to Class I on this basis and their promotions back dated to 06.10.1994 and placed in the second salary step of Class I of the SLTS.

The Petitioners were eligible to earn the annual increments due from 1994 by virtue of their promotions being back dated although they were not eligible for back wages.

The Petitioners pray for a writ of mandamus directing the 1st Respondent to issue specific directions to the 2nd to 6th Respondents to implement the scheme/directions contained in P5, P6 and P7 and adjust the Petitioners retiral benefits accordingly and a writ of mandamus directing the 2nd to 6th Respondents to adjust the Petitioners' retiral benefits in terms of P5, P6 and P7.

Hence the main issue in this application is to ascertain whether circulars marked P5(R6), P6 and P7 are applicable to the Petitioners.

Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990

The learned SD SG for the Respondents submitted that the Petitioners have failed to comply with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990 as they have failed to annexe the letters of appointment by which they were promoted to Class I. Rule 3(1)(a) requires every application made to this Court in terms of Article 140 of the Constitution to be accompanied by the originals or duly certified copies of documents material to such application.

The gravamen of the Petitioners case is the retiral benefits of the post of Class I of the SLTS. The letters of appointment to Class I is hence a material document and this application is liable to be dismissed on this ground alone.

In *Shanmugavadivu v. Kulathilake* [(2003) 1 Sri.L.R. 215] the Supreme Court held that the requirements of Rules 3 (1)(a) and 3 (1) (b) are imperative and that in the circumstances of the

case the Court of Appeal had no discretion to excuse the failure of the petitioner to comply with the Rules.

No Enforceable Legal Right

The right of a retired Government servant to a pension is not one that can be enforced in a Court of law [*Gunawardena v. Attorney General* (49 NLR 359)]. The Minutes on Pensions do not create legal rights enforceable in the Courts [*Attorney General v. Abeysinghe* (78 NLR 361)]. Public servants have no absolute right to any pension or allowance under the regulations of the Minutes on Pension [*Jayarathne v. Wickremaratne and Others* (2003) 2 Sri.L.R. 276].

In *Perera v. National Housing Development Authority* [(2001) 3 Sri.L.R. 50 at 53] J.A.N. De Silva J. (as he was then) held:

“On the question of legal right it is to be noted that the foundation of -mandamus is the existence of the right. (*Napier Ex parte*⁽¹⁾). Mandamus is not intended to create a right, but to restore a party who has been denied his right to the enjoyment of such right.”

The Petitioners are seeking an enhancement of their retiral benefits by way of writ of mandamus which is not possible.

P5, P6 and P7 Not Applicable to the Petitioners

In any event P5, P6 and P7 are not applicable to the Petitioners.

By the time P5 was issued the Petitioners had already been promoted to Class I of the SLTS taking into consideration their period of service after having being placed on the highest salary step after absorption into Class 2 Grade I of the SLTS.

The fact that P5 is inapplicable to the Petitioners is clearly demonstrated by the fact they were placed in the second salary step of Class I with effect from 06.10.1994 and became eligible for salary increments due to Class I teachers from 1994 and were in fact paid increments since 1999 whereas in terms of P5 those promoted were not eligible for back wages and were entitled to be paid their salary together with the increments earned for service in Class I only with effect from 01.01.2005.

The Petitioners in their counter affidavit have sought to rely on a new document A7 to obtain relief. This is not the basis of the case pleaded for writs of mandamus which the Respondents were called upon to answer and the Petitioners are not entitled to rely on it now [*Culasubhadra v. The University of Colombo and Others* (1985) 1 Sri.L.R. 244].

For all the foregoing reasons the application is dismissed but without costs in the circumstances of the case.

Judge of the Court of Appeal