

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 Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 132/2017

1. Bayya Durayalage Rohana,
(Police Constable 16631),
House near the school,
Pubbiliya, Kobeyigane.
2. Olupathage Bomithra Jayantha Silva,
(Police Constable 17386 – Sri Lanka Police
Special Task Force (STF))
203/23, Galle Road, Rathmalana.
3. Kumarasinghe Pathirage Laxman Upali
Jayalath,
(Police Sergeant 17686),
726, Thethigama, Wetadeka, Thuntota,
Kegalle.
4. Suduwa Dewage Pradeep Sisira Jayamuni
De Silva
(Sub Inspector)
No. 146.2, Madiwela Road, Udahamulla,
Nugegoda.
5. Kurukulasooriya Patabandige Viraj
Jeewantha De Silva,
(Police Constable 75743 – Sri Lanka Police
Special Task Force (STF))
Madara, Kuda Maskeliya, Maskeliya.
6. Upasaka Gedara Chaminda Pushpakumara
Jayasena,
(Sub Inspector – Sri Lanka Police Special
Task Force (STF)),
No. 7, Galgedara Wana, Kande Kumbura,
Galagedara.

7. Kankanamge Shantha Kumara,
(Police Constable 62631)
Yaya 2, Morawewa, Pankulan,
Trincomalee.
8. Ranawana Sayakkara Gedara Gamini
Premarathne,
(Police Constable 44186),
182/B, Kodabogoda, Kadugannawa.
9. Pahala Ange Kubure Gedara Newton
Karunathilake,
(Police Constable 33487 – Sri Lanka Police
Special Task Force (STF))
No. 151/9, Palipana, Poojapitiya, Kandy.
10. H.M. Upul Karunarathne,
(Police Constable 13229 – Sri Lanka Police
Special Task Force (STF)),
No. 12/179, Kesalpota, Mapakada Wewa,
Mahiyangana.

PETITIONERS

Vs

1. Pujith Jayasundara,
Inspector General of Police,
Police Head Quarters, Colombo 01.
2. Jagath P. Wijeweera,
Secretary,
Ministry of Law and Order and Southern
Development,
Floor No. 13, Stage II, 'Sethsiripaya',
Battaramulla.
3. Jagath Abeysiri Gunawardene,
Senior Deputy Inspector General
(Welfare),
Police Head Quarters, Colombo 01.

4. Senior Superintendent of Police
SSP Officer, Nikawaratiya.
5. Senior Superintendent of Police
SSP Office, Mount Lavinia
6. Senior Superintendent of Police
SSP Office, Kegalle.
7. Senior Superintendent of Police
SSP Office, Colombo North.
8. Senior Superintendent of Police
SSP Office, Hatton.
9. Senior Superintendent of Police
SSP Office, Kantale.
10. Senior Superintendent of Police
SSP Office, Kandy.
11. Senior Superintendent of Police
SSP Office, Badulla.
12. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Mahinda Samayawardhena, J
Arjuna Obeyesekere, J

Counsel: Dr. U.L. Ali Zacky for the Petitioners

Manohara Jayasinghe, Senior State Counsel for the Respondents

Written Submissions: Tendered on behalf of the Petitioners on 24th August 2020
Tendered on behalf of the Respondents on 15th June 2020

Decided on: 16th November 2020

Arjuna Obeyesekere, J

When this matter was taken up for argument on 26th August 2020, the learned Counsel for the Petitioners and the learned Senior State Counsel for the Respondents moved that judgment in this matter be delivered on the written submissions that had already been tendered by the parties.

The 1st – 3rd, 5th and 7th – 10th Petitioners had joined the Police Department as Police Constables at different periods of time between 1988 – 2008, while the 4th and 6th Petitioners had joined as Sub Inspectors of Police in 1990 and 1996, respectively. While the 1st – 5th Petitioners claim that they sustained injuries whilst performing law enforcement measures, the 6th – 10th Petitioners claim that they have sustained injuries whilst performing operational duties or due to terrorist attacks. All Petitioners state that they are permanently disabled as a result of the said injuries.

It is admitted by the parties that the Cabinet of Ministers took the following decision, marked '**P4**', in July 1982:

“ The Cabinet considered a note to the Cabinet on “Special Provision for Officers of the Armed Services and the Police who have been killed or who have been permanently disabled as a result of terrorist activity whilst performing law enforcement duties” by the President and Minister of Defence since numbered as Cabinet Paper No. 305 of 1982 (Continuation 9), and approval was granted:

- (a) for the next of kin of these personnel of the Armed Services and the Police who are killed whilst performing operational duties or as a result of terrorist activity or other law enforcement measures to be paid the full salary and allowances of the deceased officers which were paid to him on the date of his death till such time as he would have reached 55 years of age if he was alive;*
- (b) for any officer of the Armed Services or Police who is disabled and has to leave the services as a result of such injuries received whilst performing operational duties or by terrorist activity or other law enforcement measures to be paid the full salary and allowances he was drawing at the time he received such injuries till he reached the age of 55 years.*

- (c) *For any increases in pay allowances that would accrue to such officers from time to time if they were alive and in service to be also paid to those in categories (a) and (b) above;*
- (d) *For the date of implementation of this decision to be retrospective from 22.7.1977, and the payment under this scheme to commence from the date of the decision of the Cabinet; and*
- (e) *For any special case which deserve consideration and as defined above which occurred prior to 22.7.1977 to be examined on an individual basis."*

There is no dispute that the above Cabinet decision applies to all Officers in the Police Department who have suffered permanent disability due to terrorist attacks or while being engaged in law enforcement measures. This is confirmed by Circular No. 107/82 dated 19th August 1982, marked 'P5', issued by the 1st Respondent, the Inspector General of Police.

The Petitioners state that after becoming permanently disabled, they were all paid varying sums of money as compensation. While some of the Petitioners have been paid their salaries from the time they became disabled, the salaries of the 1st – 4th Petitioners had been paid only from August 2009, although they suffered their injuries leading to the disability in 1990, 1991, 1998 and 1999, respectively. The Petitioners however admit that since 2012, they are being paid their salary.

The Petitioners state that in addition to the payment of their salaries, they are also entitled in terms of 'P4' to the payment of allowances that are paid to those who are currently in service. While some of the Petitioners have been or are being paid some of the said allowances, the Petitioners complain that there has not been any consistency in the payment of allowances. The Petitioners state that they made representations to the 1st Respondent, and to the 2nd Respondent, the Secretary, Ministry of Law and Order (under which Ministry the Police Department functioned at the time this application was filed), seeking a resolution of the issue relating to the payment of allowances. However, as no finality had been reached, the Petitioners have filed this application, seeking *inter alia* the following relief:

- a) A Writ of Mandamus directing that the Petitioners be paid allowances in accordance with the Cabinet decision marked 'P4';
- b) A Writ of Mandamus directing that the Petitioners be paid all their allowances from the date that they were declared disabled.

Acting on representations made to the Ministry of Law and Order in 2015 by the 4th Petitioner, an Additional Secretary of the said Ministry, by letter dated 30th October 2015 marked 'P5a', had requested the 1st Respondent to provide details of all Officers who have suffered permanent disabilities and the steps hitherto taken by the Police Department in terms of 'P4'.

By letter dated 23rd December 2015 marked 'P6', the 1st Respondent had informed the Secretary, Ministry of Law and Order as follows:

- a) Public Administration Circular No. 21/88 has made provision to pay the salary and all allowances to all Officers of the Police Department who have suffered permanent disability as a result of terrorist activity, and who have been retired on medical grounds, until they reach the age of 55.
- b) Those who do not fall within (a) above, but who have become permanently disabled as a result of suffering injuries while performing their official duties and who are retired on medical grounds are entitled to the payment of their salary until they reach the age of 55, together with compensation calculated at ten years of their salary, in terms of Public Administration Circular No. 22/93.
- c) The category of Officers in (b) above are however not entitled to the payment of allowances in terms of the said Circular No. 22/93.

With regard to the Cabinet decision 'P4', the 1st Respondent had stated as follows in 'P6':

“1982.08.21 දින අමාත්‍ය මණ්ඩලය විසින් අනුමත කර ඇති 1982 අංක 305 දරණ අමාත්‍ය මණ්ඩල පත්‍රිකාව මගින් නීතිය හා සාමය ආරක්ෂා කිරීමේ රාජකාරී යෙදී සිටියදී සිදුවන අනතුරු හේතුවෙන් මත එහි ප්‍රතිපලයක් වශයෙන් මරණයට පත් වන හෝ පූර්ණ ආබාධිත තත්වයට පත්වන නිලධාරී නිලධාරිනියන් සඳහා ඔවුන් එම සිද්ධියට මුහුණ දෙන අවස්ථාවේදී ලබාගත් වැටුප්

අනෙකුත් දිමනා සියල්ල නිලධාරීන් කාලානුරූපීව සේවය සිටියා සේ සලකා නිලධාරියාගේ වයස අවු. 55 වන තෙක් ගෙවීම සඳහා අනුමැතිය ලබාදී ඇත. ඊට සමගාමීව පොලිස් දෙපාර්තමේන්තුව මගින් ද මූලස්ථාන චක්‍රලේඛ 478/82 හා පරිපාලන චක්‍රලේඛ 107/82 යටතේද නියෝග කර තිබුන ද කුමන හෝ පරිපාලනමය අතපසුවීමක් මත මෙය ක්‍රියාත්මක වී නොමැත”

The 1st Respondent had thereafter sought approval for the following:

“එසේ හෙයින් 1982.07.21 දිනැති කැඩනට පත්කාව පරිදි නීතිය හා සාමය ආරක්ෂා කිරීමේ රාජකාරි යෙදි සිටියදි මිය ගිය නිලධාරි නිලධාරිනියන්ගේ යැපෙන්නන්ට හා නීතිය හා සාමය සුරකීමට යාමේදි අනතුරු සේතුවෙන් ආබාධිතව වෛද්‍ය සේතුවන් මත විශ්‍රාම ගන්නා ලද නිලධාරීන් හට ඔවුන් ආබාධයට ලක්වන අවස්ථාවේදි ලබමන් සිටි වැටුප් හා අනෙකුත් සියලු දිමනා ද කාලානුරූපීව කරන ලද වැඩිවීමද සමග ගෙවීම කිරීමට නිර්දේශ කර අමාත්‍යාංශ අනුමැතිය සඳහා ඉදිරිපත් කරමි”

In response to ‘P6’, the Ministry of Law and Order, by its letter dated 27th May 2016 marked ‘P7’ had granted the 1st Respondent the approval to proceed with the request made in ‘P6’.¹

The 1st Respondent had thereafter issued Internal Circular No. 2582/16 on 13th July 2016 marked ‘P7a’, conveying the contents of ‘P7’ and calling for details of those Officers who have suffered permanent disability while performing operational duties or as a result of terrorist attacks. Similar instructions have been issued by Circular marked ‘P8’.

The Police Department had thereafter issued RTM No. 461 on 14th November 2017, marked ‘R1’ informing that any Officer who is suffering from a permanent disability due to an injury sustained while being on duty maintaining law and order should be paid his salary, and allowances referred to therein, until that Officer reaches the age of 55, and that such payments shall commence from November 2017. ‘R1’ goes onto state that instructions have been issued by the Ministry of Law and Order for the payment of arrears as well, and that once financial allocations are obtained, instructions with regard to payment of arrears would be issued.

¹ ‘P7’ reads as follows: “ඒ අනුව 1982.08.21 දින අමාත්‍ය මණ්ඩල අනුමැතිය ලැබ ඇති 1982 අංක 305 දරණ අමාත්‍ය මණ්ඩල පත්‍රිකාව අනුව නීතිය හා සාමය ආරක්ෂා කිරීමේ රාජකාරියේ යෙදි සිටියදි සිදුවන අනතුරු සේතුවෙන් එහි ප්‍රතිඵලයක් වශයෙන් මරණයට පත්වන හෝ පුරණ ආබාධ තත්ත්වයට පත්වන නිලධාරීන් සඳහා ඔවුන් එම සිද්ධියට මුහුණ දෙන අවස්ථාවේ ලබාගත් වැටුප් සහ අනෙකුත් දිමනා සියල්ල වයස අවු. 55 වන තෙක් ගෙවීම සඳහා ලබා දි ඇති අනුමැතිය පරිදි නිකුත් කර ඇති අංක 478/82 දරණ මූලස්ථාන චක්‍රලේඛය පරිදි කටයුතු කිරීම සුදුසු බව දන්වමි.”

Thus, the clear instructions issued by the 1st Respondent, as well as the Ministry of Law and Order, and the Police Department are that all Officers who have suffered permanent disability while being engaged in maintaining law and order should be paid their salary and allowances until they reach the age of 55 years. In other words, the 1st and 2nd Respondents have agreed to apply 'P4' to all Police Officers who satisfy the criteria specified in 'P4'.

In his written submissions, the learned Senior State Counsel has submitted that while the Respondents are making every endeavour to ensure the payment of all allowances and arrears of allowances to those who have suffered permanent disability by answering the call of duty, the 1st Respondent is unable to proceed any further unless and until the necessary financial appropriation is made by the Cabinet of Ministers. Thus, there is no denial by the Respondents that 'P4' does not apply to Officers of the Police Department who have satisfied the criteria laid down therein.

I shall now consider if a Writ of Mandamus would lie in these circumstances.

In Ratnayake and Others vs C.D.Perera and others,² the Supreme Court, having considered the matters that must be satisfied by a party seeking a Writ of Mandamus, held that:

"The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties."

In Rajeswari Nadaraja v. M. Najeed Abdul Majeed, Minister of Industries and Commerce and Others³ Aluwihare, J held that, "In an application for a writ of

² [1982] 2 Sri LR 451.

³ SC Appeal No. 177/15; SC Minutes of 31st August 2018.

mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists.”

Thus, while the public authority must be under a legal or public duty to carry out the act which a petitioner demands, and have the power to carry out the said duty, the petitioner in turn must have a legal right to the performance of such public duty. In **Kaluarachchi vs Ceylon Petroleum Corporation and Others**,⁴ Fernando J, referring to the judgment in **Credit Information Bureau of Sri Lanka vs M/s Jafferjee and Jafferjee (Pvt) Limited**⁵ reiterated that, “*the foundation of mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce a right which is not legal and not based upon a public duty.*”

I shall now consider whether the Petitioners have satisfied the above criteria.

In order to have a legal right or in other words, to be eligible in terms of ‘**P4**’ for the payment of salaries and allowances, there are two requirements that must be satisfied.

The first is that the Police Officer must have been permanently disabled. I have set out in the following table the nature of the disability suffered by each of the Petitioners, as set out in the report of the Medical Board.

Petitioner	Document	Nature of the injury	Permanent disabled
1 st	P2a	Gunshot injury. Paraplexic	Yes – 100%
2 nd	P2b	Not clear	Yes – 100%
3 rd	P2c	Acid attack on eyes. Blind	Yes – 100%
4 th	P2d	Not specified	Yes – 100%
5 th	P2e	Not specified	Yes – 100%
6 th	P2f	Not clear	Yes – 100%
7 th	P2g	Not specified	Yes – 100%

⁴ SC Appeal No. 43/2013; SC Minutes of 19th June 2019.

⁵ [2005] 1 Sri LR 89.

8 th	P2h	Not specified	Yes – 100%
9 th	P2i	Totally blind. Amputation of left forearm	Yes – 100%
10 th	P2j	Not specified	Yes – 100%

The position of the Petitioners that they are permanently disabled is supported by the Medical Reports. However, either due to an oversight or otherwise, the Respondents have claimed that they are unaware of the averments in paragraphs 3-6 of the amended petition, which are the paragraphs that have set out the fact that the Petitioners have suffered permanent disabilities. Although the Petitioners have not submitted, either with their petition or counter affidavit, any document issued by the Police Department confirming that they are permanently disabled, the fact that a Government Medical Board have certified their disability, as well as their inability to work as a result of such disability, is sufficient proof that the Petitioners have complied with the first requirement of 'P4'.

The second requirement that must be satisfied to qualify under 'P4' is that the permanent disability must be as a result of injuries suffered whilst performing operational duties, or as a result of terrorist activity, or other law enforcement measures. As I have already observed, the Petitioners have stated that the 6th – 10th Petitioners have sustained injuries whilst performing operational duties or due to terrorist attacks, while the rest of the Petitioners suffered their injuries during the line of duty. However, in view of the position taken up by the Respondents that they are unaware of the averments in paragraph 5 of the amended petition,⁶ the Petitioners should have responded by annexing the necessary material with their counter affidavit, which the Petitioners unfortunately have not done. Therefore, in the absence of any material to justify the position of the Petitioners with regard to the cause of their disability, I regret that I am unable to arrive at any conclusion with regard to the cause of the disability suffered by the Petitioners, or to determine whether the Petitioners are covered by 'P4'.

In the above circumstances, I am of the view that:

⁶ Paragraph 5 of the petition reads as follows: 'The Petitioners state that 1st – 10th Petitioners are Police Officers. The 1st to 5th Petitioners became persons with disabilities (disabled) as a result of the injuries sustained whilst performing other law enforcement measures. Whereas the 6th – 10th Petitioners became persons with disabilities (disabled) as a result of the injuries sustained whilst performing operational duties or by terrorist activities.'

- (a) The Petitioners have failed in their duty to establish that they have a legal right to the payment of allowances in terms of 'P4';
- (b) The Petitioners are not entitled to the Writ of Mandamus prayed for.

This application fails as the Petitioners have not established that they have satisfied part of the criteria laid down in 'P4'. However, in view of the submission of the learned Senior State Counsel that the Respondents will make every endeavour to ensure the payment of all allowances and arrears to those who are eligible, this Court directs the 1st Respondent:

- (a) To ascertain within six weeks from today whether the Petitioners satisfy the criteria laid down in 'P4';
- (b) To initiate necessary action within ten weeks from today to obtain the required financial allocation, if one or more of the Petitioners are eligible for the payment of salaries and allowances in terms of 'P4' and have satisfied the eligibility criteria set down by the Police Department;
- (c) Once such financial allocation is made available to the 1st Respondent, to effect the payment of allowances that are payable in terms of 'P4' including arrears, to those Petitioners who have satisfied the eligibility criteria set down by the Police Department.

Subject to the above, this application shall stand dismissed. I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal