

**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 Certiorari and  
Mandamus under and in terms of Article 140  
of the Constitution of the Democratic Socialist  
Republic of Sri Lanka

**CA (Writ) Application No: 164/2010**

1. Wimalasena Gamage,  
President,  
Association of Public Service Engineers,  
No. 272/75, Stanley Wijesundara Mawatha,  
Colombo 7.
2. B.K. Jayasundara  
No. 16A, Irrigation Quarters, Ratmalana.
3. D.M. Abayarathna,  
No. 5A, Irrigation Quarters, Ratmalana.
4. D.H. Jayasooriya,  
254, Welagedara Gardens, Kurunegala.
5. W.L.D.P.S. de Silva,  
34, Udaya Mawatha,  
Gangodawila, Nugegoda.
6. N.I. Harsehandra,  
No. 72, Gamunupura, Yakkala.
7. P.T. Madurawela,

No. 61, Pilimathalawa Gardens, Pilimatalawa.

8. P.M. Rathnapala,  
No. 371, Bellanthara Road, Dehiwela.
9. R.A.C. Gunathilake,  
172/1, Somarathna Mawatha,  
Bellanwila, Boralasgamuwa.
10. G.D.S. Jayawardana,  
92/19, Galaboda Watta,  
Makumbura, Pannipitiya,

#### **PETITIONERS**

Vs.

1. D. Dissanayake,  
Secretary, Ministry of Public  
Administration and Home Affairs.
- 1A. T. Abeykoon,  
Secretary,  
Minister of Public Administration,  
Independence Square, Colombo 7.
2. Udaya Ranjith Senevirathne,  
Deputy Secretary to the Treasury.
- 2A. A.T.A Abeysekara,  
Deputy Secretary to the Treasury,  
Ministry of Finance and Planning, Colombo 1.

#### **RESPONDENTS**

**Before:** Mahinda Samayawardhena, J  
Arjuna Obeyesekere, J

**Counsel:** Manohara De Silva, P.C., with Imalka Abeysinghe for the  
Petitioners

Vikum De Abrew, Senior Deputy Solicitor General with  
Ms. Chaya Sri Nammuni, Senior State Counsel for the  
Respondents

**Argued on:** 17<sup>th</sup> June 2020

**Written Submissions:** Tendered on behalf of the Petitioners on 28<sup>th</sup> October 2019

Tendered on behalf of the Respondents on 4<sup>th</sup> July 2018

**Decided on:** 29<sup>th</sup> July 2020

**Arjuna Obeyesekere, J**

The Petitioners have filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision contained in paragraph 3(a) of Public Administration Circular No. 6/2006 (VII) dated 22<sup>nd</sup> August 2008 marked '**P8**' by which it was decided that Officers who had been promoted to Class I of the Sri Lanka Engineering Service and the Sri Lanka Accountants Service shall be entitled to three increments based on the value of such increment at the time they were promoted to Class II Grade I;
- b) A Writ of Mandamus directing the 1<sup>st</sup> Respondent to grant three increments to the Petitioners based on the present value of such increment;

- c) A Writ of Prohibition preventing the Respondents from discriminating between Class I Officers who were promoted to Class I prior to, and after 1<sup>st</sup> January 2006.

The complaint of the Petitioners is that the said decision contained in paragraph 3(a) of '**P8**' is arbitrary, illegal and irrational. In considering this complaint of the Petitioner, this Court must be mindful that in this application, this Court is exercising its Writ jurisdiction as opposed to its Appellate jurisdiction. This distinction has been referred to in **Administrative Law** by Wade and Forsyth<sup>1</sup> in the following manner:

*"The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'"*

As Lord Brightman stated in the House of Lords in **Chief Constable of North Wales Police v Evans**<sup>2</sup>, applications for judicial review are often misconceived:

*"Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power..... Judicial review, as the words imply, is not*

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<sup>1</sup> H.W.R. Wade and C.F. Forsyth, *Administrative Law* (11<sup>th</sup> Edition), Oxford University at page 26.

<sup>2</sup> [1982] 1 WLR 1155 at 1174.

*an appeal from a decision, but a review of the manner in which the decision was made..”*

The facts of this matter very briefly are as follows.

At the time of filing this application, all Petitioners were Public Officers, with the 1<sup>st</sup> – 5<sup>th</sup> Petitioners being Class I Officers of the Sri Lanka Engineering Service and the 6<sup>th</sup> – 10<sup>th</sup> Petitioners being Class I Officers of the Sri Lanka Accountants Service. All Petitioners had been promoted to Class I of their Service between 1987 and 1993.

According to the relevant Service Minute,<sup>3</sup> recruitment to each Service was effected to Class II Grade II. While an Officer who had completed *inter alia* ten years of satisfactory service was eligible to be promoted to Class II Grade I, all Officers who had completed eighteen years of overall service were eligible to be promoted to Class I, on seniority and merit.

By Circular No. 6/2006 dated 25<sup>th</sup> April 2006 marked '**P4**' issued by the Ministry of Public Administration and Home Affairs, the Government had re-structured the Public Service salaries, service grades and promotional procedures, with effect from 1<sup>st</sup> January 2006.

The grades and salary scales that existed prior to the introduction of '**P4**', and which were applicable to the aforementioned three Classes, were as follows:

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<sup>3</sup> Vide documents marked 'P2a' and 'P2b'.

<b>Class</b>	<b>Salary Scale</b>
Class II Grade II	TB 5 – 1 – 2
Class II Grade I	TB 6 – 1
Class I	TB 7 – 1

The changes that were introduced by '**P4**' included the following:

- a) All Officers belonging to the aforementioned Services handling executive functions, including the Petitioners, were categorised as 'Executives';
- b) The aforementioned Class/Grades were amended as follows:

<b>Prior to 'P4'</b>	<b>After 'P4'</b>
Class II Grade II	Grade III
Class II Grade I	Grade II
Class I	Grade I

- c) All three service grades were placed on a unified salary scale of 'SL-1'.

It is noted that prior to the introduction of '**P4**', the salary scales of the said Classes had been revised with effect from 1<sup>st</sup> January 2004, with those in the said Services receiving the following salaries:

<b>Class</b>	<b>Salary Scale</b>	<b>Starting salary</b>	<b>Number of increments and value</b>
Class II Grade II	TB 5 – 1 – 2	13125	16 / Rs. 315
Class II Grade I	TB 6 – 1	17915	07 / Rs. 645
Class I	TB 7 – 1	22970	10 / Rs. 990

The salary scales that were introduced with effect from 1<sup>st</sup> January 2006 in terms of '**P4**' were as follows:

Class	Salary Scale	Starting salary	Number of increments and value
Grade III	SL-1	22935	10 / Rs. 645
Grade II	SL-1	30715	07 / Rs. 790
Grade I	SL-1	36755	16 / Rs. 1050

The Petitioners state that when converting the salary scales from the previous salary scales, to SL-1, there was an anomaly created between the salaries of those who were promoted to Class II Grade I, before 31<sup>st</sup> December 2005, and after 1<sup>st</sup> January 2006, with the latter category receiving four salary steps more than the former category in view of the fast tracked promotion scheme that existed prior to the introduction of 'P4'. It was therefore recommended that this anomaly be rectified by the granting of four salary increments to the former category.<sup>4</sup> What is important is that the four increments were not being granted out of the increments that an Officer was entitled, to by virtue of being an Officer in Class I, but were increments out of Class II Grade I.

What is equally important is that this anomaly did not affect the Petitioners directly, as they had been promoted to Class I as far back as 1993, and were placed, with the introduction of 'P4', on a salary commensurate with the number of increments that they had already received by that time. For example, the 1<sup>st</sup> Petitioner had been promoted to Class I in August 1989, and had earned maximum salary increments in Class I by the time 'P4' was introduced. With 'P4' coming into force, the 1<sup>st</sup> Petitioner was entitled to receive increments for the sixteen years he had served by then in Class I, and should have accordingly been placed on the maximum salary scale of SL-1, and entitled to receive a monthly salary in a sum of Rs. 53,555. The Petitioners have not tendered any material to

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<sup>4</sup> Vide letter dated 30<sup>th</sup> October 2006 marked 'P6' sent by the National Salaries and Cadres Commission.

demonstrate that they were placed on a lower salary scale. Thus, the recommendation to grant four increments was limited to those who had been promoted to Class II Grade I prior to 31<sup>st</sup> December 2005, and **who were in service as at 1<sup>st</sup> January 2006 in the newly created Grade II.**

The Petitioners have however claimed that the aforementioned recommendation to grant four salary increments *would result in a chain reaction when making promotions to Class I for the reason that those Officers who were already in Class I had not received the same increments and therefore those officers who come in the **future** to Class I from Class II would enjoy a higher salary.* It is noted that under 'P4', an Officer, once he is promoted to Class I, was entitled to receive sixteen salary increments. Thus, even with four salary increments of Class II Grade I being added to an Officer who had been promoted to Class II Grade I prior to 31<sup>st</sup> December 2005, and assuming that with the said four salary increments, such Officer became eligible to be promoted to Class I under 'P4', such Officer would be sixteen salary steps/increments behind the Petitioners, who, with the introduction of 'P4' and by virtue of having almost twenty years in Class I, were placed at the maximum salary scale of SL-1. Thus, while there may have been a chain reaction, the concern of the Petitioners that there would be a chain reaction **that would affect them**, appears to be unfounded. The Petitioners have not placed before this Court any material that would suggest otherwise.

The above recommendation to grant four increments of Class II Grade I to those who had been promoted to Class II Grade I prior to 31<sup>st</sup> December 2005, had been implemented by the Ministry of Public Administration through an amendment to 'P4'. The amendment Circular – i.e. PA Circular No. 06/2006(VII) dated 22<sup>nd</sup> August 2008 marked 'P8' – reads as follows:



*“After the introduction of the SL-1-2006 salary scale by the above circular with effect from 1<sup>st</sup> January 2006 to the All Island Services and to the posts for which equivalent salaries have been assigned, the officers promoted prior to the above date have received relatively a lower salary than the salary entitled to certain officers promoted from the new Grade III to the Grade II (formerly from Grade II/II to Grade II/I).*

*02) In order to rectify the anomaly, it has been decided, to grant 3 salary increments (Rs.790x3) **of Grade II** to the officers, who had been promoted to grade II/I or II before 01.01.2006 and **remaining in the same grade on the said date** of an All Island Service or in any other post drawing equivalent salaries remaining in the same grade after converting their salaries to SL-1-2006 if they have fulfilled the requirements given below:*

- (a) Should have been in receipt of a salary on the salary scale of TB-6-1 by 31-12-2005.*
- (b) Should have served in a grade assigned with a salary scale of TB-5-1-2 or a corresponding salary scale which had been in force earlier, before being promoted to the grade assigned with the salary scale of TB-6-1.*
- (c) Should have served for a period of not less than 10 years in the salary scale of TB-5-1-2 or in a salary scale corresponding to it and should have earned all the salary increments relating to the particular salary scale when the above promotion was made.”*

The above paragraph makes it clear that the three increments are being granted to those who remain in Grade II after 1<sup>st</sup> January 2006, which means that the

increments that were being granted were increments that are due for Class II Grade I, and not Class I. Therefore, paragraph 2 of '**P8**' was not applicable to the Petitioners.

The paragraphs in '**P8**' which are in issue in this application are paragraphs 3 and 5, and are re-produced below:

*"03) Action should be taken as given below in respect of officers who have fulfilled the requirements mentioned in paragraph 02 above and **promoted prior to 01.01.2006 to Class I of an All Island Service or any post assigned with the equivalent salary, that is TB-7-1 and remained in same grade on that prescribed date.***

*(a) To convert the salary of officers to the salary scale relevant to Class I on hypothetical basis by adding 3 salary increments (based on the **value of grade II or II/I) based on the incremental value as applicable to the date of promotion, to the salary drawn last by officers whilst in grade II or II/I.***<sup>5</sup>

*(b) Thereafter, grant salary increments on hypothetical basis, if the salary increments have subsequently been earned up to 31.12.2005.*

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<sup>5</sup> The Sinhala text of paragraph 3(a) reads as follows:

ඉහත 02 වැනි පේදයේ සඳහන් අවශ්‍යතා සපුරා, 2006.01.01 දිනට පෙර දිප ව්‍යාප්ත සේවාවක හෝ ඊට සමාන වැටුප් නියම කර ඇති තනතුරක I පන්තියට, එනම් ටීබී-7-1 වැටුප් පරිමාණය හිමි පන්තියකට/යේනියකට උසස්වීම ලබා, **එදිනටද එම සේවයේ සිටි නිලධාරීන් සම්බන්ධයෙන් පහත සඳහන් පරිදි කටයුතු කළ යුතුය.**

(අ) එම නිලධාරීන් **II හෝ II/I ශ්‍රේණියේ අවසාන වරට ලද වැටුප් පියවරට එදිනට අදාළ වූ වැටුප් වර්ධක අගය මත වැටුප් වර්ධක 03 ක් (II හෝ II/I ශ්‍රේණියේ අගය මත) එකතු කර, I පන්තියට අදාළ වැටුප් පරිමාණයට කල්පිත පදනමින් වැටුප් පරිවර්තනය කිරීම.**

*(c) Subsequently, place on the salary step relating to Grade I of the SL-1-2006 salary scale corresponding to the salary step, of the salary scale TB-7-1 with effect from 01.01.2006 on hypothetical basis.*

*(04) .... (Not applicable to the Petitioners).*

*(05) Accordingly, in placing the officers to whom the paragraph 03 and 04 above is applicable, **on the relevant salary scale on 01.01.2006**, the relevant Authorities should ensure that the officers are placed on the specific **salary step entitled only to the number of salary increments earned by them as at 31.12.2005**. The arrears will not be paid for the increments earned on hypothetical basis, up to 31.12.2005. Please refer paragraph 03 of the Public Administration Circular No: 06/2006 dated 25.04.2006 and paragraphs 03 and 04 of Public Administration Circular NO: 06/2006 (VI) dated 26.06.2008 for further clarifications.*

*(06) There is a possibility that there would be no increase in the present salaries drawn by certain officers in making conversions in terms of this Circular. It will not be considered as an anomaly."*

The effect of paragraphs 3 and 5 of '**P8**' was to grant three increments even to those who had been promoted to Class I prior to 1<sup>st</sup> January 2006, and therefore included the Petitioners. This was to prevent an Officer in Class II Grade I as at 31<sup>st</sup> December 2005, receiving a salary higher than an Officer who is already in Class I as at 31<sup>st</sup> December 2005 and continues in Grade I after 1<sup>st</sup> January 2006, by virtue of receiving three increments in terms of **paragraph 2** of '**P8**'. Three increments of Class II Grade I being granted to all officers who were in Class I as at

31<sup>st</sup> December 2005 thus restored the parity in terms of the number of increments received by each Officer in Class I as at 31<sup>st</sup> December 2005.

The complaint of the Petitioners arises from the decision in paragraph 3 of 'P8' to grant the Petitioners increments ***based on the incremental value as applicable to the date of promotion*** to Class II Grade I, which they claim is very low. The Petitioners have therefore alleged that *their starting salary in Class I is lower than the starting salary step of Officers promoted to Class I after the introduction of 'P8'*.<sup>6</sup> However, the Petitioners have not placed before this Court any material to establish this statement, nor have the Petitioners produced any material to demonstrate that they have been discriminated by the contents of 'P8'.

The Respondents have explained the effect of the *anomaly* as follows:

*“Answering the averments in paragraphs 23 and 24 of the said Petition, the Respondents state that the anomaly in the salary structure was in relation to the officers who were promoted to Class II (Grade I) prior to 1.1.2006. There was no such salary anomaly in respect of Class I officers and the present incremental value was given to officers who had been promoted prior to 1.1.2006 to Class II Grade I since their salary was short of the amount of three increments at the present incremental value in order to tally with the salaries of those who were promoted after 01.01.2006. The Respondents further state that the determining factor is not the incremental value but the number of increments in view of the fact that if*

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<sup>6</sup> Vide paragraph 24(b) of the petition.

*an increment is given there is a strong likelihood of the increment getting increased with the oncoming salary revisions.”<sup>7</sup>*

It may be true that the value of the increment granted to, for e.g. a hypothetical Officer in Class II Grade I who is promoted to that Grade in 2004 can be higher than, for e.g. the value of the increment that the 1<sup>st</sup> Petitioner would have received in Class II Grade I, as at the date he was promoted to Class I (i.e. in August 1989). However, what is important is that the cut off date for receiving increments, or the equaliser date, for both categories of persons - i.e. the 1<sup>st</sup> Petitioner, and the hypothetical Officer - would be 1<sup>st</sup> January 2006. Thus, whatever the quantum or value of the increment of Class II Grade I received prior to 31<sup>st</sup> December 2005, with the introduction of 'P4' with effect from 1<sup>st</sup> January 2006, the difference in salary that existed between the 1<sup>st</sup> Petitioner and the hypothetical Officer prior to 'P8', which may have been affected by the increments in **paragraph 2** of 'P8', would be restored to the position that existed prior to the granting of three increments to those referred to in paragraph 2 of 'P8'.

This position can be illustrated as follows. The 1<sup>st</sup> Petitioner, for e.g., having been promoted to Class I in August 1989 had acquired the maximum number of increments payable in Class I in terms of the revised salary structure introduced with effect from 1<sup>st</sup> December 2004 – vide 'P3c'. It is assumed that with the introduction of 'P4', the 1<sup>st</sup> Petitioner, by virtue of having been in Class I for 16 years, would have been entitled to be placed at increment number 16, which is the maximum that an Officer in Class I could be placed at. Thus, as far as the 1<sup>st</sup> Petitioner is concerned, whether the 1<sup>st</sup> Petitioner receives any further

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<sup>7</sup> Vide paragraph 10 of the Statement of Objections.

increments in terms of 'P8' is immaterial. This would in fact apply to all Petitioners, as they had served a minimum of 13 years in Class I, prior to 'P4'. However, if one takes the case of an Officer who had been promoted to Class I as at 1<sup>st</sup> January 2005, and an Officer in Class II Grade I who by virtue of getting three increments as per the adjustment made in terms of paragraph 2 of 'P8', qualifies to be promoted to Class I on 1<sup>st</sup> January 2006, the former officer may be at a disadvantage. It appears that paragraph 3 of 'P8' has been introduced to rectify this extremely rare situation, so that the Officer who had been promoted to Class I on 1<sup>st</sup> January 2005 would now be entitled to get his appointment to Class I pushed by three years by virtue of getting three increments for Class II Grade I. In the said circumstances, I am of the view that the Petitioners have failed to place any material before this Court to demonstrate that paragraph 3 of 'P8' is arbitrary or irrational.

There is one other matter that I must advert to. The Petitioners claim that the issue raised in this application had been raised by them with the Respondents prior to the filing of this application. The Petitioners have submitted letters dated 1<sup>st</sup> September 2008 and 26<sup>th</sup> March 2009 sent by the 1<sup>st</sup> Petitioner marked 'P10a' and 'P10b' respectively, as proof thereof. I have examined 'P10a' and observe that, while the issue before this Court has not been discussed at all, the Petitioners had only raised an issue relating to their non-promotion to a grade that would have qualified them to receive the salary due under category SL-3. Similarly, I have examined 'P10b' and observe that the complaint of the Petitioners was that by virtue of the three increments granted by 'P8', other Officers in Class I could reach the maximum salary scale in SL-1 within thirteen years of service, while the Petitioners had to serve seventeen years to reach the

maximum salary scale in SL-1. This grievance of the Petitioners has nothing to do with the complaint presented in this application.

In the above circumstances, I do not see any legal basis to grant the relief prayed for by the Petitioners. This application is accordingly dismissed without costs.

**Judge of the Court of Appeal**

**Mahinda Samayawardhena, J**

I agree

**Judge of the Court of Appeal**