

**In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka**

**In the matter of an application for Writs of  
Certiorari and Mandamus under Article 140  
of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.**

**C.A. Case No: WRT-184-19**

01. M. G. Bandula Bandara  
Mahaniga Waththa, Madakumbura,  
Dunukedeniya

**Petitioner**

1. E. P. T. K. Ekanayake,  
Provincial Director of Education of the  
Central Province,  
Department of Education of the Central  
Province, Palkekele, Kundasale
2. M. G. Amarasiri Piyadasa  
Zonal Director of Education,  
Nuwara-Eliya,  
Zonal Education Office, Nuwara-Eliya
3. S. W. Sidath Vipularathne  
Zonal Director of Education, Kothmale,  
Zonal Education Office, New Town,  
Kothmale
4. Gamini Rajarathne  
Secretary to the Ministry of Education of  
the Central Province, Provincial Council  
Complex, Palkekele, Kundasale.
5. Maithree Goonerathne  
Governor of the Central Province,  
Governor's Office, Kandy
6. Provincial Director of Audit, Provincial  
Audit Department, Provincial Council  
Complex
7. Gamini Dassanayake, Chairman  
7.A. T. B. Harindranath Dunuwille, Chairman
8. U. A. Bogahapitiya, Member  
8.A. W. M. S. D. Weerakoon, Member

9. P.P.S.A. Dissanayake, Member

9.A. A.W. Wais, Member

10. Prof. V. Nandakumar, Member

10.A. Rohitha Tennakoon, Member

11. A.J.M.M. Nisthar, Member

11.A. N.D.K. Piyumsiri, Member

11. B. T.M. Gunapala, Member

The seventh to eleventh Respondents of all:

The Provincial Public Service Commission of  
the Central Province, No. 244, Katugasthota  
Road, Kandy

12. Sararth Premawansha, Chief Secretary of  
the Central Province, Provincial Council  
Complex, Palkekele, Kundasale.

13. Director General of Pension, Department of  
Pension, Colombo 10

**Respondents**

**Before:** M. T. M. Laffar, J.

S. U. B. Karalliyadde, J.

**Counsel:** Chamara Nanayakkarawasam with D. Fernando for the Petitioner  
Sabrina Ahamed SSC for the Respondents

**Written submissions tendered on:**

19.11.2021 and 22.11.2021 by the Petitioner

09.12.2021 by the Respondents

**Argued on:** 12.10.2021.

**Decided on:** 11.01.2022.

**S.U.B. Karalliyadde, J.**

This writ application has been filed on 03.05.2019 when the Petitioner was serving as a school teacher attached to the Sri Lanka Teachers' Service and while pending the action, upon reaching the compulsory retirement age of 60 years, he had retired from the service on 05.05.2019. He had applied for a voluntary retirement with effect from 05.05.2017 upon reaching 58 years when he was serving in a school governed under the Central Province Provincial Council. The Zonal Director of Education of Nuwara-eliya (the 2<sup>nd</sup> Respondent), by letter dated 03.02.2017 (with a copy to the Petitioner) marked as P-6 forwarded the application of the Petitioner to the Zonal Director of Education of Kothmale (the 3<sup>rd</sup> Respondent) for the approval of leave prior to retirement and the 3<sup>rd</sup> Respondent, with a copy to the Principal of the school where the Petitioner worked at that time, by letter dated 15.02.2017 marked as P-7 informed the 2<sup>nd</sup> Respondent that leave prior to retirement has been approved for the period of 06.03.2017 to 04.05.2017. Thereafter, the Petitioner was informed by 2<sup>nd</sup> Respondent by letter dated 14.03.2017 marked as P-8 that leave prior to retirement has been approved for the period of 06.03.2017 to 04.05.2017 and by an undated letter marked as P-10 that the steps have been initiated to retire him from the service with effect from 05.05.2017. Consequently, the Petitioner did not report for work from 05.05.2017. Nevertheless, the Provincial Director of Education of the Central Province (the 1<sup>st</sup> Respondent) or the 2<sup>nd</sup> or 3<sup>rd</sup> Respondents or the Secretary to the Ministry of Education of the Central Province Provincial Council (the 4<sup>th</sup> Respondent) who had the authority to make a decision about granting permission for the Petitioner to retire, neither granted permission to retire nor rejected the application of the Petitioner. The Petitioner alleges that since there was no response from the Respondents and he had to face severe financial difficulties in maintaining his family

without a salary or pension, by letter dated 12.12.2017 marked as P-14 he made a request from the 4<sup>th</sup> Respondent to reinstate him in the service with back-wages without a break of the service. The 1<sup>st</sup> Respondent, by letter dated 29.08.2018 marked as P-18 informed the Petitioner that the 4<sup>th</sup> Respondent had approved his request to reinstate subject to the conditions that the period between 06.03.2017 (the date on which leave prior to retirement was commenced) to the date of reporting back to work as a no-pay period and to recover a sum of Rs. 137 694/40 from him, which the Provincial Director of Audit (the 6<sup>th</sup> Respondent) had recommended to recover from the Petitioner as a tax which he is liable to pay to the State for a vegetable cultivation done by him on the school land without obtaining permission from the authorities. The Petitioner reported back to work on 06.09.2018.

The learned Counsel for the Petitioner argue that if the said period considered as a no-pay period, the Petitioner would be denied back-wages for that period and it would be prejudicial to his other emoluments including salary increments for that period and ultimately it would reduce the monthly pension which he was entitled to upon reaching 60 years. Therefore, the learned Counsel argued that the decision mentioned in P-18 is illegal, arbitrary, unreasonable and irrational on the grounds that the Petitioner did not report for work from 05.05.2017 after duly informing and obtaining leave prior to retirement, had he duly retired on 05.05.2017 he would have been entitled to a monthly pension from that date onwards, there is no reasonable justification in denying back-wages and other emoluments for the period hereinbefore mentioned, there is no fault on the part of the Petitioner for the Respondents to consider the said period as a no-pay period and it is a violation of his legitimate expectation.

The learned State Counsel appearing for the Respondents submitted to Court that knowing the fact that there is a pending audit query against the Petitioner regarding his illegal cultivation of vegetable on the school land he applied for a voluntary retirement and because of the pending audit query his request was not allowed. The learned State Counsel further submitted that before the audit query was concluded the Petitioner requested to reinstate him in the service and accordingly, he was reinstated subject to the conditions stated in P-18 and he did not object to those conditions when he was reinstated. There is no dispute between the parties that the amount which the Petitioner was held to be liable to pay to the State at the audit query was subsequently deducted from his commuted pension at the time of his compulsory retirement. The contention of the learned State Counsel appearing for the Respondents is that since the Petitioner was not in the active service from 05.05.2017 to 06.09.2018 he is not entitled to back-wages for that period and the decision taken by the Respondents and communicated on P-18 is according to law. Therefore, the learned State Counsel seeks to dismiss the Petitioner's application for writs.

By this writ application, the Petitioner seeks reliefs *inter alia*, to issue a writ of Certiorari to quash the decision of the 1<sup>st</sup> and/or 4<sup>th</sup> Respondent contained in P-18 to consider the period from 06.03.2017 to the date of reinstatement as a no-pay period, a writ of Mandamus directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents and the Governor of the Central Province (the 5<sup>th</sup> Respondent) or anyone or more of them to pay the Petitioner back-wages and other emoluments including salary increments for the period of 06.03.2017 to the date of reinstatement on 06.09.2018, alternative to that relief a writ of Mandamus directing the 1<sup>st</sup> to 5<sup>th</sup> Respondents or anyone or more of them to pay the Petitioner back-wages and other emoluments including salary increments for the period from 05.05.2017 to 06.09.2018 (the date of reinstatement).

The contention of the learned Counsel for the Petitioner is that the Petitioner had a legitimate expectation that permission will be granted for him to retire from the date on which leave prior to retirement was expired. The learned State Counsel for the Respondents submitted to Court that even though, leave prior to retirement had been approved for the Petitioner, by then the steps were initiated against him to hold an Audit query regarding the cultivation done by him without permission of the authorities on the school land and therefore, his application for voluntary retirement was not approved/allowed. The learned State Counsel further submitted that since the Petitioner did not report for work from 06.03.2017 (the date on which leave prior to retirement commenced) to 06.09.2018 (the date of reinstatement) the 3<sup>rd</sup> Respondent decided that the Petitioner should not be entitled to his salary for that period.

P-7 issued by the 1<sup>st</sup> Respondent states that leave prior to retirement for the Petitioner has been approved according to the provisions of section 11 of Chapter XII of the Establishment Code. Sub-section 11:1 of Chapter XII provides that, **immediately before retirement**, an officer eligible for vacation leave, may be granted the vacation leave available to him **at the time of his retirement**. Hence, according to that provision of the Establishment Code **at the time of the retirement**, available vacation leave of an officer could be granted **immediately before the retirement**. Accordingly, it is clear that at the end of the vacation leave, retirement should automatically follow and therefore, the Petitioner in the instant action should be retired after leave prior to retirement was expired. When leave prior to retirement is granted, substantive expectation protected procedurally is also that the retirement should follow. Hence, an officer who is on vacation leave, expecting to retire has a legitimate expectation that he will be allowed to retire immediately after the vacation leave expires. Under the above stated circumstances, I hold that a legitimate

expectation has been arisen for the Petitioner that he will be allowed to retire with effect from 05.05.2017.

It is a recognized principle in the administrative law that when an expectation of a person is going to be affected, he should be given an opportunity to make representations before his expectation is dashed. In the instant action, even though, the Petitioner had a legitimate expectation that his application to retire with effect from 05.05.2017 will be approved, before dashing his expectation he has not been given an opportunity to be heard. Therefore, the failure of the Respondents to offer an opportunity to the Petitioner to present his facts before taking the decision mentioned in P-18 is against the principles of Natural Justice namely, *audi alteram partem* rule.

The learned State Counsel submitted to Court that even though, the Petitioner has sought a writ of Mandamus directing the 1<sup>st</sup> to 5<sup>th</sup> Respondents to pay him back-wages and other emoluments including salary increments for the period starting from 06.03.2017, his salary had been paid for the period of 06.03.2017 to 04.05.2017 as per R-10. The learned State Counsel argues that non-disclosure of the fact that he received his salary for that period is a suppression and misrepresentation of a material fact and therefore, the Petitioner is not entitled to a writ of Mandamus directing to pay his salary starting from 06.03.2017 to the date of reinstatement which includes a period which his salary had been paid. It has been admitted by the Petitioner that his salary has been paid for the period of 06.03.2017 to 04.05.2017. Even though, by prayer (d) the Petitioner has sought a writ of Mandamus directing the 1<sup>st</sup> to 5<sup>th</sup> Respondents to pay his salary for the period commencing from 06.03.2017, by prayer (e) alternatively he has prayed for his salary for the period commencing from

05.05.2017, excluding the period which he has been already paid. Therefore, the Court will consider granting the alternative relief sought by prayer (e).

The learned State Counsel argues that the Petitioner has suppressed the fact that he had cultivated vegetable on '**60 perches**' of the school land and attempted to impress the Court that he had used only '**a small portion of the land**' for his vegetable cultivation. Therefore, the learned State Counsel argues that the Petitioner has not come to Court with clean hands and on that reason, he should not be entitled to prerogative reliefs by way of writs. There is no Surveyor plan for the satisfaction of the Court that the extent of the land utilized for the private use of the Petitioner is exactly 60 perches. Nevertheless, especially in paragraphs 8 to 10, 12, 13, 22, 23, 28, 29, 34, 39, 42 and 43 the Petitioner has disclosed the facts about the cultivation done by him on the school land, Audit query held against him regarding to that cultivation, the outcome of the inquiry. Therefore, even though, the Petitioner has not stated the exact extent of the land he utilized for his private purpose, the Court can be satisfied that he has not suppressed the fact that he has done a vegetable cultivation on the school land without permission of the authorities and the consequences he had faced thereafter. It has been admitted that the amount which the Petitioner was held to be liable to pay as tax to the State for his vegetable cultivation was deducted from his commuted pension. In any event the Petitioner does not seek any relief regarding the tax he had paid to the State. Therefore, the extent of the land which the Petitioner has cultivated the vegetable is not a material and an important fact to consider in issuing the writs sought by the Petitioner and the above stated argument of the learned State Counsel is devoid of merits.

Another argument of the learned State Counsel is that the Petitioner has failed to explain the delay in seeking reliefs from the Court. The Petitioner has filed this writ



application on 03.05.2019 impugning the decision of the Respondents dated 29.08.2018. Therefore, it seems that there is a gap of about eight months between those two dates. The Petitioner has requested/appealed to set aside the decision contained in P-18 to consider the period from 06.03.2017 to the date of reinstatement as a no-pay period and to pay his salary for the period which he had not been paid from the 4<sup>th</sup> Respondent by the appeal dated 25.09.2018 marked P-20, from the State Minister of Education by letter dated 03.10.2018 marked P-21, from the Secretary to the Ministry of Education of the Central Government by letter dated 31.10.2018 marked P-25, from the 5<sup>th</sup> Respondent by the appeals dated 12.12.2017 and 19.12.2018 marked as P-30 and P-31 respectively, from the 3<sup>rd</sup> Respondent by the latter dated 20.12.2018 marked P-32(a), from the 1<sup>st</sup> Respondent by letter dated 26.12.2018 marked P-32(b), from the 5<sup>th</sup> Respondent by letter dated 16.01.2019 marked as P-32(c) and from the Accountant of the Provincial Education office by letter dated 31.01.2019 marked P-32(d). Nevertheless, the Petitioner has not received any official response to the said letters/appeals from them up till 31.01.2019. Since his grievance has not been addressed, this action has been instituted on 03.05.2019 after about 3 months from that date of P-32(d). Under such circumstances, the Court can be satisfied that the Petitioner has sought reliefs from the Court within a reasonable period of time and therefore, he is not guilty of laches.

According to the learned State Counsel appearing for the Respondents, reason for not granting permission to the Petitioner to retire after the vacation leave was expired was that there was a pending inquiry against him regarding the illegal vegetable cultivation on the school land. If that is so, he should not have been granted leave prior to retirement and should have been informed immediately in writing that his application for retirement could not be considered. But the Respondents have failed to

take such steps. Had the Respondents took such a step, there was no other option for the Petitioner other than reporting for work at the end of the vacation leave. On the other hand, if there was any impediment to grant permission for the Petitioner to retire, when he did not report for work after the vacation leave was expired, the proper step should have been the service of vacation of post notice or to take steps to dismiss him from the service. But the Respondents have not taken any of those steps either. Even though, in the statement of objections of the Respondents it has been stated that the vacation of post notice marked R-1 was served on the Petitioner, at the Argument the learned State Counsel admitted that R-1 relates to a previous occasion and not to the occasion which relates to the instant action. Under the above stated circumstances, I am of the view that the 1<sup>st</sup> to 4<sup>th</sup> Respondents have neglected/failed to perform their official duties.

The administrative decisions should be taken by the decision makers in the proper and correct stage following the proper steps to ensure smooth functioning of the State mechanism. Failures and/or delays in taking administrative decisions would cause adverse effects to the State affairs. The failures and delays could be due to various reasons like non-commitment to duty, negligence, reluctance, favourism, bias, etc. The malpractices of the State officers could lead to bribery and corruption also and ultimately would jeopardize the entire system. Due to the inaction of decision makers to take decisions, there could be instance where the State should be liable to bear unnecessary expenses/costs. For instance, the State would be liable to pay damages, compensation or wages to the general public or to the State officers.

The Petitioner in this action has not rendered his services to the State from 05.05.2017 to 06.09.2018. As hereinbefore stated, the 1<sup>st</sup> to 4<sup>th</sup> Respondents have failed to take

steps to retire the Petitioner or to offer him an opportunity to present his facts before making the decision contained in P-18. They have also failed to take steps to serve a vacation of post notice on the Petitioner or to dismiss him from the service when he did not report to work on 05.05.2017 at the end of the vacation leave. The Petitioner has not reported for work not because of his fault, but assuming that he would be retired once leave prior retirement is expired. Therefore, I am of the view that the Petitioner should be entitled to his salary for that period. Nevertheless, the Petitioner has not rendered his services to the State during that period. Therefore, the Court cannot order the State to bear the amount which the petitioner should have been entitled as his salary for that period. As mentioned above, as the 1<sup>st</sup> to 4<sup>th</sup> Respondents have failed/neglected to perform their official duties, I hold that they are jointly responsible to pay an amount equating to the net salary which the Petitioner could have been earned during that period to him as compensation. Furthermore, I hold that for the purpose of deciding the pension benefits of the Petitioner that period should be considered as a period which the Petitioner had been in the active service. Subject to the above stated variations Court will issue a writ of Certiorari as prayed for in prayer (c) to the Petition. The 1<sup>st</sup> to 4<sup>th</sup> Respondents should personally pay Rs. 10 000/- each as costs to the Petitioner.

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHOMAD LAFFAR J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**