

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

*In the matter of an application for the issue of a writ in the nature of Writ of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

**CA/WRIT/213/2022**

H. A. D. Dharmasiri  
No. 801/109, Green Horizon,  
Karuwalapitiya,  
Meegoda.

**PETITIONER**

Vs.

1. Secretary,  
Ministry of Public Administration and  
Home Affairs,  
Independence Square,  
Colombo 07.
2. Director General of Combined  
Services,  
Ministry of Public Administration and  
Home Affairs,  
Independence Square,  
Colombo 07.
3. Director General of Pensions  
Department of Pensions,  
Maligawatta,  
Colombo 10.
4. Divisional Secretary  
Divisional Secretariat,  
Kolonnawa.

5. People's Bank  
No. 75, Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

### **RESPONDENTS**

**Before:** Sobhitha Rajakaruna J.

Dhammika Ganepola J.

**Counsel:** Chandana Botheju with Minidu Wilegoda for the Petitioner.

Ishara Madarasinghe, SC for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

Rasika Dissanayake with Chandrasiri Wanigapura for the 5<sup>th</sup> Respondent (released from the proceedings).

**Argued on:** 08.01.2024, 08.02.2024, 05.04.2024

**Written Submissions:** Petitioners - 07.06.2024

1<sup>st</sup> to 4<sup>th</sup> Respondents - -

**Decided on:** 05.07.2024

### **Sobhitha Rajakaruna J.**

The Petitioner, a public servant was served with a letter dated 10.10.2006 ('P2') by the General Manager of Railways suspending his services with immediate effect subject to the approval of the Director General of Establishments. Despite this, the Petitioner was reinstated, pending a formal disciplinary inquiry (Vide - 'P3'). In the meantime, the Petitioner reached retirement age but was granted an extension of service until 31.12.2008.

As a consequence to the formal disciplinary inquiry, the Petitioner was found guilty for all the charges of the relevant Charge Sheet and accordingly the Director General of Establishments on 12.01.2010 ordered to pay the pension to the Petitioner subject to the following conditions:

- (i) Pay the pension after deducting 20% from the pension

- (ii) To deny the payment of arrears of salary for the period where the Petitioner was under suspension

In terms of Clause 36:7 of Chapter XLVIII of the Establishments Code, when the Disciplinary Authority finds that an officer is guilty of one, some or all of the charges at a formal disciplinary inquiry, he should, depending on the nature of the charge or charges of which the officer is found guilty, send his observations and recommendations on whether the officer should be deprived of his full pension, gratuity and other allowances payable to him or whether a certain percentage thereof should be deducted, together with the charge sheet, report of the inquiry and all other relevant documents to the Secretary in charge of the subject of Public Administration.

The Public Service Commission ('PSC'), reviewing an appeal filed by the Petitioner against the above-mentioned disciplinary orders, dismissed the appeal. The Administrative Appeals Tribunal ('AAT') on 17.07.2018 dismissed the Petitioner's appeal filed against the order of the PSC. The Petitioner has not taken steps to challenge the decisions of the PSC and the final order of the AAT.

The Petitioner sought a clarification regarding his pension payments from the Divisional Secretary of *Kolonnawa*. In response, the Accountant of the Divisional Secretariat issued a letter dated 07.04.2021 marked 'P14', detailing several deductions from his pension. The Petitioner challenges, in the instant Application, the decisions outlined in 'P14', arguing that its contents violate the provisions of Circular 12/2003(dated 25.09.2003), Circular No. 5 of 2007 (dated 06.03.2007), and/or Clause 36:7 of Chapter XLVIII of the Establishments Code.

The 1<sup>st</sup> to 4<sup>th</sup> Respondents argue that the initial award of pension dated 24.02.2010 ('P7') and the subsequent award of pension dated 31.03.2011 ('R1') were both calculated with a 20% penalty deduction, before and after pension commutation, in accordance with the disciplinary orders marked 'P5' and 'P5a'. Noticing an error in the award of pension dated 28.05.2012 marked 'P8', the Divisional Secretary of *Kolonnawa* requested the Department of Pensions to rectify such error.

Subsequently, the Department of Pensions issued two additional awards of pension dated 21.01.2020 marked 'P11' and 11.02.2020 marked 'P12'. The 'P11' award recouped the excess pension previously paid to the Petitioner, while the 'P12' award included an additional increment for the Petitioner. The Petitioner's pension was further adjusted in accordance with the Pension Circular 14/2019, which applies to all retired public officers.

The Divisional Secretary of *Kolonnawa*, affirming an affidavit, states that an amount of Rs. 4864.02 representing 20% of the pension, was mistakenly not deducted during the previous pension revision. It is observed that the Divisional Secretary is required to follow the disciplinary orders marked 'P5' and 'P5a' when making the Petitioner's monthly pension payments. Consequently, Rs. 148,885.46 was erroneously credited to the Petitioner's bank account. The excess amount of Rs. 82,688.34 has since been recovered in accordance with section 43(a) of the Minutes on Pensions, as amended by Gazette No. 1776/40 dated 21.09.2012.

The Respondents, in addition to submitting the award of pension marked 'R1', have presented the Court with another award of pension dated 30.08.2011, marked 'Rx'. They argue that the Petitioner has not contested the said 'Rx' award or any other awards of pension and as such the Petitioner has acquiesced to the receipt of the pensions as calculated according to the disciplinary orders marked 'P5' and 'P5a'.

The Petitioner contends that there is no rational basis for calculating the subtraction of the gratuity amounting to Rs. 295,273 reflected in the award of pension marked 'R1' from the commuted gratuity amounting to Rs. 369,091 stipulated in the award of pension dated 30.08.2011, marked 'Rx', since the original gratuity payment was Rs. 287,152 in the pension award dated 24.02.2010, marked 'P7'. Therefore, the Petitioner argues that there is no rational basis for paying him Rs. 73,818, which is the difference between Rs. 369,091 and Rs. 295,273.

However, the Statement of Objections of the 1<sup>st</sup> to 4<sup>th</sup> Respondents and the affidavit from the Divisional Secretary of *Kolonnawa* outline the events that led the Department of Pensions to amend the awards of pension, which the Petitioner has not contested. The Petitioner's complaint is solely based on the contents of the said Accountant's letter marked 'P14'.

The learned State Counsel who appears for the 1<sup>st</sup> to 4<sup>th</sup> Respondents, referring to the award of pension dated 30.08.2011 ('Rx') submitted that all arrears have been duly paid to the Petitioner and the current pension is being paid in accordance with the said award of pension 'Rx'. It is noted that the Petitioner is not challenging the contents of the said award of pension.

I take the view that the Petitioner has not demonstrated to Court that the said Accountant failed to properly calculate the awards of pension issued by the Department of Pensions. The Petitioner's main argument is that there is no rational basis for subtracting the gratuity amount in the award of pension 'R1'. However, after thoroughly reviewing the documents marked 'Rx' and 'Rx2' (including the annexures to 'Rx2'), the Court is unable to find any errors in the calculation in the impugned letter marked 'R14'.

I find no significant discrepancies in the data reflected in 'Rx2', which includes details from 2010 to 2023, when comparing the awards of pension with the averments of the Respondents' Statement of Objections. Additionally, I take the view that sufficient evidence or material has not been provided to Court to establish any alleged errors in the impugned letter 'P14', contradicting the unchallenged awards of pension. Anyhow, I need to make an observation that the Petitioner should be duly paid his pension in terms of the award of pension marked 'Rx' without him being subjected to any undue distress by the relevant authorities.

In light of the above, I hold that the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition. Thus, I proceed to dismiss the instant Application subjected to the above observation.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**