

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

In the matter of an application for orders 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) No. 148/2020

1. Koswinnage Sarath Lal Perera
No. 202/1B,
Rathmaladeniya Road,
Pannipitiya.
2. Kandana Arachchige
Thilakarathna
No. 40, Baudhaloka Road,
Piliyandala.
3. Sooriyagoda Abeysinghelage
Chandradasa Abeysinghe
No. 307/C, ChithraMawatha,
PahalaImbulgoda,
Imbulgoda.
4. Weththasingha Appuhamilage
Dona Gerty Kumudini
Eswatta South,
Puwakpitiya.
5. Pathirannehelage Mahinda Gamini
Gunathilake
No. 29, Thilaka Road,
Gampaha.

6. R. M Dayarathna
No. 112/3, Pin Arawa,
Bandarawela Road,
Badulla.
7. A. R. Ajith
No. 351/B,
Nandasara Mawatha,
Hokandara North,
Hokandara.
8. K. V. A. U Kumarasinghe
‘Pubudu’,
Dope,
Bentota.
9. D. D. J. Wijenayake
No. 333/14, Dewala Road,
Katuwana,
Homagama.
10. Jayasuriya Arachchige Don
Somasiri Nandana
No. 209, Palliyapitiya East,
Dunagaha.
11. Gamage Jayatissa
No. 59B, Weera Mawatha,
Kalalgoda,
Pannipitiya.
12. Sujatha Gardiye Punchihewa
No. 226F, ‘Punsiri’,
Dippitigoda,
Kelaniya.
13. A. J. M Munawwar
No. 61/1, Peer Saibu Street,
Colombo 12.

14. Dannangoda Gamage
Samarathunga
No. 229/B/9, Welmilla Junction,
Bandaragama.
15. Rammuni Nandasiri De Silva
'Madawa'
Sanwardhana Road,
Kudawaskaduwa,
Waskaduwa.
16. Anthony Sarathchandra
No. 195/A/06,
Pubudu Lane,
Tewaththa,
Ragama.
17. A. Sunethra Chandralatha
Wagasenawi
No. 351/B, NandasaraMawatha,
Hokandara North,
Hokandara.
18. Hettiarachchi Don Nimal
Hettiarachchi
No. 25/3, Wickramarachchi
Mawatha,
Yakkala.
19. Herath MudiyanseelageSumana
Herath
No. 380, Eswatta,
Puwakpitiya.
20. Sita Hettiarachchi
No. 198/1, Pitipana North,
Temple Junction,
Homagama.
21. Herath Pathirannehelage
Gnanathilake
No. 74, Mihindupura,
Pallewela.

22. Jinasiri Dadallage
No. 80/4, Ambatale Road,
Wellampitiya.
23. Arukattu Patabendige Mangalika
De Silva
No. 479/2, Bodhiya Road,
Thalangama North,
Thalahena, Malabe.
24. Nalani Jayanthi Vithanage
No. 1/400, Kalapaluwawa,
Rajagiriya.
25. K. W. Jayatilake
No. 78, Nandana Mawatha,
Negombo Road,
Kurunegala.
26. Seelawathie Kothalawala
No. 333/14, Dewala Road,
Katuwana,
Homagama.
27. D. G. C. R. Gunawardena
No. 976, Malabe Road,
Kottawa,
Pannipitiya.
28. W. A. A. G. Fonseka
No. 72/4/3, De Saram Place
Bandarawatta,
Gampaha.
29. Rohini Rathnayake
No. 158/1/B, Pitipana North,
Homagama.
30. R.J.M Jayasundara
No. 112/2A, Jayathilake Mawatha,
Pilapitiya,
Kelaniya.

31. Jayaweera Arachehige Padmini
Jayaweera
No. 224/1/1,
BandaranayakeMawatha,
Colombo 12.
32. D. Suseema De Silva
No. 295/12-A, Pelenwatta,
Pannipitiya.
33. Upasena Palihawadana
No. 279/8, Kaldemulla Road,
Kaldemulla,
Moratuwa.
34. Kulasinghe Arachchige Nimalasiri
Perera
No. 40B, Andagala Road,
Pol-Athtapitiya,
Kurunegala.
35. G. Winifrida Silva
No. 222/2, Mukalangamuwa
South,
Seeduwa.
36. P. G. Gunarathna Banda
No. 20, Nirmala Pedesa,
Alakoladniya Road,
Walketuwawa,
Kurunegala.
37. K. M. S. W. Kuruppu
No. 181/B, Kanduboda,
Delgoda.
38. Gardiyawasam Weligamage
Dhammika Priyankanthi
No. 3/10, Wijaya Road,
Kolonnawa.

39. Nissanka Mudiyanse
Wijayarathna
No. 217/B/1, Temple road,
Akarawita,
Gampaha.
40. Susil Rathnayake
No. B/22/2/4, Soyzapura Flats,
Soyzapura
Moratuwa.
41. Yapa Mudiyanse
Dodangathanne Gedera
Abeyrathne Banda
No.116/12D,
Viharamawatha,
Mulgampola,
Kandy.
42. Don Clinton Anasley Athukorala
No. 150A,
Weliwita,
Kaduwela.
43. Bedde Kankanange Sunil
Samarasinghe
No. 19/52, Amunugoda,
Imbulgoda.
44. Peramune Ralalage Sarath
Rathnasiri Peramune
No. 19/5, Viharawatta Road,
Pathiragoda,
Navinna,
Maharagama.
45. Malimbada Liyanage Sriyani
Ramya Kumari
8B/17/L, N.H.S,
Raddolugama.

46. Kirinde Hewagala Gamage Indralal
Sarathchandra Sirisena
No. 95, Godagandeniya,
Peradeniya.
47. Kalahe Arachchige Silvester Perera
No. 11, Yattovita,
Thiththapaththara.
48. Chandimal Wijerathna
No. 336/1, Green Terrace,
Arukwaththa North,
Padukka.
49. Mirissa Lankage Viruman Palathisi
No. 12/84, PahalaGampola Road,
Penideniya,
Peradeniya.
50. Nanayakkara Liyanage Don
Ranjan Rupananda
No. 139, Kajugahawatta,
Gothatuwa.
51. A. W. A. A. Abeysekara
No. 158/2, AlibahinaThotupola
Road,
Kotaroope,
Raddolugama.
52. SellakkodyMudiyansalage
Premasiri
No. 188/2, Siriniwasa,
PahalaYagoda,
Ganemulla.
53. Kalupathirannehelage Bhadra
Chandani Jayaratne
No. 418/2A, Bodiya Road,
Thalahena
Malabe.

54. K. M. Rupasiri
No. 100, Sulakashana,
Ginimellagaha South,
Ginimellagaha.
55. Lalith Ranjan Kongahage
Amarasinghe
No. 76/8, Temple Road,
Kottawa,
Pannipitiya.
56. T. V. K. Jayantha
No. 86/7, Temple Road,
Weerawila.
57. K. Premasiri Fernando
No. 204, Jaya Pedesa,
Arukwatta,
Padukka.
58. Thalangama Appuhamilage
Gamini Gunasekara
No. 238, Kaduwela Road,
Malabe.
59. Senarath Nissanka
Wimalasurendra
No.5, Baduwatta Road,
Levella,
Kandy.
60. Guna Munige Jayarathna
No. 257-C, Parana Awasa Road,
Malamulla West,
Panadura.
61. Dediwalage Lalani Chandrika
Perera
No. 34, St Peters Road,
Moratuwella,
Moratuwa.

62. Silippu Mudiyanseelage
Wijewardhana
Rammuthugala,
Narammala.
63. R.R. B. W. M. A. R K. Rathnamala
No. 7, Pelakumbura Estate,
Pelakumbura,
Ibbagamuwa.
64. R. R. M. Sarath Chandrasiri
No. 370/A/1,
Galahiiyawa South,
Ganemulla.
65. Ranathunga Mallawa-arachchi
No. 3/7, NamalMawatha,
Padiwatta Road,
Naththarampotha,
Kandy.
66. Galkissa Adikaramage Amitha
Nilanthi Perera
No. 357/4, Manelwatta Road,
Bollegala,
Kelaniya.
67. Korottagoda Gamage
Chandrawathie
No. 375/5, Samupakara Mawatha,
Habarakada,
Homagama.
68. E. M.U. W. D. Bandara
No. 185/13, Wedagama Road,
Pasyala.
69. Lokuwithana Pathirannehelage
Keerthi Jayathilake
No. 251. Koskandawala,
Yakkala.

70. Lidamullage Gamini Silva
No.271B1,
Maswila,
Bandaragama.
71. Godakanda Arachchi Roy
Mahendra Nanayakkara
No. 26, 8th Lane,
Maweedalupotha,
Yanthampalawa,
Kurunegala.
72. Ranpati Dewage Rupa Sriyalatha
No. 46, Moriswatta,
Kanumale, Ranjanagama.
73. Dissanayake Mudiyanseleage Indra
Kumari Dissanayake
No. 44, Cristies Land,
Kiralabokka,
Kalugamuwa.
74. Mahappu Arachchige Don Latha
Jayawardena
No. 546, Nindahena Road,
Nindahena
Gothatuwa.
75. Palihaderu Arachchige Ubesena
No. 43/1, Kalalgoda,
Pannipitiya.
76. Malala Aloka Bandaralage Leelani
Hemalatha Bandaranayake
No. 400A, SirikumalWatta,
Mallwapitiya, Kurunegala.
77. Hetti Arachchige Gnanasiri
Dharmapriya
No. 200, Praja Road,
Obahena Road,
Madiwela.
Kotte.

78. Kapila KasthiriArachchi
29C, Bulugahagoda,
Ganemulla.
79. Anura Kumara Wickramasuriya
No. 265/3/C, Mandawila Road,
Kesbewa,
Piliyandala.
80. Gamage Widanelage Wimalawathie
No. 537/2/A, Delgahawatta Road,
Wanawasala,
Kelaniya.
81. Kiringoda Kankanamge Geethika
Shanthi Kiringoda
No. 17, Holycross Avenue,
Moratuwa.
82. Samarasooriya Kapila Janak
Samarasooriya
No. 314/B
SisilSewana
Kelimune,
Mahakeliya.
83. Atukorallage Piyal Palitha
Ranasinghe
No.657/1A, Amarasekara
Mawatha,
Athurugiriya Road,
Kottawa.
84. Kottawatta Kankanam Manage
Ashoka Damayanthi
No. 34, 'Siripathi',
Rukmale,
Pannipitiya.
85. Parana Vithanagei Ramyalatha
No. 444/23, ViharaMawatha,
Kothalawala,
Kaduwela.

86. Bombuwela Dewage Chandradasa
Thilakarathna
No. 267/12, Nagahakotuwa Road,
Balummahara,
Imbulgoda.
87. Karandeni Dewage Sirimal
No. 18F,
Asgiriya West
Gampaha.
88. Maharage Margarita Irine Pushpa
Perera
'Nipuni', Bendikada Road,
Pahala,
Katuneriya.
89. Meemanage Sarath Perera
No. 430/1, WeeraMawatha,
Depanama,
Pannipitiya.
90. Nihal Munasinghe Disanayake
No. 44/28, Lanarolle Mawatha,
Pahala Bomiriya,
Kaduwela.
91. A. K. Vinitha Gunarathna
No. 50/2, Naranwala,
Gampaha.
92. Kadirajja Godage Priya Shyamalie
Wijerathna
No. 44/28, Golden Terrace,
Lanarolle Mawatha,
Pahala Bomiriya,
Kaduwela.
93. Violet Hewa Kodithuwakku
No. 50/9, B, RathmalUyana,
Pubudu Mawatha,
Maththegoda.

94. Hewa Mummullage Sunil
No. 8/6, Fonseka Place,
Kalutara North.
95. Mahinda Jayasinghe
Convenor,
National Organization for
Preservation of Rights of Retired
Personnel
No. 259/9, SethsiriMawatha,
Koswatta,
Thalangama.

Petitioners

Vs

1. J. J Rathnasiri
Secretary, Ministry of Public
Services,
Provincial Councils & Local
Government,
Independence Square,
Colombo 7.
- 1A. M. M. P. K. Mayadunne
Secretary, Ministry of Public
Administration, Provincial
Councils
& Local Government,
Independence Square,
Colombo 7.
- 1B. Pradeep Yasarathna
Secretary, Ministry of Public
Administration, Provincial
Councils & Local Government,
Independence Square,
Colombo 7.

2. S. R. Attygalle
Secretary to the Ministry of
Finance,
Ministry of Finance,
Lotus Road,
Colombo 1.
- 2A. K. M. Mahinda Siriwardana
Secretary to the Ministry of Finance
Ministry of Finance,
Lotus Road,
Colombo 01.
3. A. Jagath D. Dias
Director General of Pensions,
Maligawatta,
Colombo 10.
4. Hon. Mahinda Rajapaksa
Prime Minister of the Democratic
Socialist Republic of Sri Lanka
(Minister of Finance
Minister of Buddhasasana,
Religious & Cultural Affairs
Minister of Urban Development &
Housing)
Ministry of Finance,
Colombo 01.
- 4A. Hon. Dinesh Gunawardena
Minister of Public Administration
Prime Minister of the Democratic
Socialist Republic of Sri Lanka
Home Affairs, Provincial Councils
and Local Government
Ministry of Public Administration
Home Affairs, Provincial Councils
and Local Government,
Independence Square,
Independence Ave,
Colombo 07.

5. Hon. Nimal Siripala de Silva
Minister of Ports, Shipping and
Aviation
Ministry of Ports, Shipping and
Aviation,
No. 19,
Chaithya Road,
Colombo 01.
6. Hon. Dinesh Gunawardena
Minister of Foreign Relations
Ministry of Foreign Relations
Republic Building,
Sir Baron Jayathilaka Mawatha,
Colombo 01.
- 6A. Hon. Maligaspe Koralege Nalin
Manusha Nanayakkara M.P
Minister of Labour and Foreign
Employment,
Ministry of Labour and Foreign
Employment
6th floor, MehewaraPiyesa,
Narahenpita,
Colombo 5.
7. Hon. Douglas Devananda
Minister of Fisheries
Ministry of Fisheries
New Secretariat, Maligawatta,
Colombo 10.
8. Hon. Pavithra Devi Wanniarachchi
Minister of Health
“Suwasiripaya”
Ven. Beddegama Wimalawansa
Thero Mawatha,
Colombo 10.

- 8A. Hon. Achchige Don Susil
Premajayanth, M.P
Minister of Education
Ministry of Education
Isurupaya,
Pelawatta,
Battaramulla.
9. Hon. Bandula Gunawardena
Minister of Transport and Highways
Minister of Mass Media,
Ministry of Transport and Highways
1 McCallum Rd,
Colombo 01.
10. Hon. Janaka Bandara Tennakoon
(ceased to hold office)
Minister of Public Services,
Provincial Councils & Local
Government,
Independence Square
Colombo 7.
- 10A Wijayadasa Rajapaksha M.P.
Minister of Justice,
Prison Affairs and Constitutional
Reforms
Ministry of Justice, Prison Affairs
and Constitutional Reforms,
No. 19, Sri SangarajaMawatha,
Colombo 10.
11. Hon. Chamal Rajapaksa
(ceased to hold office)
Minister of Irrigation.
Ministry of Irrigation,
No. 500, 10th Floor,
T. B. Jaya Mawatha,
Colombo 10.

- 11A. Hon. Nalaka Jude Hareen Fernando
Minister of Sports & Youth Affairs
Ministry of Tourism and Lands,
6th floor, No. 21, Rakshana
Mandiraya,
Vauxhall Street,
Colombo 02.
12. Hon. Dullas Alahapperuma
(ceased to hold office)
Minister of Power,
Ministry of Power,
No. 72, Ananda
Coomaraswamy Mawatha,
Colombo 07.
- 12A. Hon. Vidura Wikramanayaka, M.P.
Minister of Buddhasasana,
Religious and Cultural Affairs,
Ministry of Buddhasasana,
Religious and Cultural Affairs,
135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.
13. Hon. Johnston Fernando
(ceased to hold office)
Minister of Highways,
“Maganeguma Mahamedura”,
9th Floor, 216, Denzil Kobbekaduwa
Mawatha,
Koswatta,
Battaramulla.
- 13A. Hon. Kanchana Wijesekera, M.P.
Minister of Power and Energy
Ministry of Power and Energy
437, Colombo – Galle Main Rd,
Colombo 3.

14. Hon. Wimal Weerawansa
(**ceased to hold office**)
Minister of Industries
Ministry of Industries,
P. O. Box 570, No. 73/1,
Galle Road,
Colombo 03.
- 14A. Hon. Ahamed Zenulabdeen Naseer,
M.P.,
(**ceased to hold office**)
Minister of Environment
Ministry of Environment
Sobadam Piyasa,
No. 416/C/I, Robert Gunwardena
Mawatha,
Battarmulla.
15. Hon. Mahinda Amaraweera
Minister of Agriculture
Minister of Wildlife and Forest
Resources Conservation,
Ministry of Agriculture
80/5, “GovijanaMandiraya”
Rajamalwatta Lane,
Battaramulla.
16. Hon. S.M. Chandrasena
(ceased to hold office)
Minister of Lands,
Ministry of Lands,
“MihikathaMedura”
Land Secretariat,
1200/6, Rajamalwatta Avenue,
Battaramulla.

- 16A. Hon. Anuruddha Ranasinghe
Arachchige Roshan M.P
(ceased to hold office)
Minister of Sports and Youth
Affairs,
09, Philip Gunewardena Mawatha,
Colombo 07.
17. Hon. Ramesh Pathirana
Minister of Industries,
Minister of Health,
Ministry of Health,
“Suwasiripaya”,
Ven. Baddegama Wimalawansa
Thero Mawatha,
Colombo 10.
18. Hon. Prasanna Ranatunga
Minister of Urban Development and
Housing
17th Floor, “Suhurupaya”,
Sri Subhuthipura Road,
Battaramulla.
- 18A. Hon. Prof. G. L. Peiris
(ceased to hold office)
Minister of Education,
Ministry of Education
Isurupaya,
Pelawatta,
Battaramulla.
- 18B. Hon. Gamini Lokuge
(ceased to hold office)
Minister of Transport,
Ministry of Transport,
7th Floor, Stage II,
“Sethsiripaya”
Battaramulla.

18C. Hon. C. B. Rathnayake
(ceased to hold office)
Minister of Wildlife and Forest
Conservation
Ministry of Wildlife and Forest
Conservation
No. 1090,
Sri Jayawardenapura Mawatha,
Rajagiriya.

18D. Hon. Keheliya Rambukwella
(ceased to hold office)
Minister of Health
Minister of Water Supply,
Ministry of Health,
“Suwasiripaya”
No. 385, Rev. Baddegama
Wimalawansa Thero Mawatha,
Colombo 10.

18E. Hon. Mahindananda
Aluthgamage
(ceased to hold office)
Minister of Agriculture
Ministry of Agriculture
80/5, “GovijanaMandiraya”,
Rajamalwatta Road,
Battaramulla.

18F. Hon. Wasudeva Nanayakkara
(ceased to hold office)
Minister of Water Supply
Ministry of Water Supply
No. 35, “LakdiyaMedura”
New Parliament Road,
Pelawatta,
Battaramulla.

18G. Hon. Udaya Prabhath Gammanpila
(ceased to hold office)
Minister of Energy
Ministry of Energy

No. 80, Sir Ernest De Silva
Mawatha,
Colombo 07.

18H. Hon. Rohitha Abeygunawardene
(ceased to hold office)
Minister of Ports & Shipping
Ministry of Ports & Shipping
No. 19, Chaithya Road,
Colombo 01.

18I. Hon. Namal Rajapakse
(ceased to hold office)
Minister of Youth and Sports
Ministry of Youth and Sports
No. 09, Philip
GuanawardanaMawatha,
Colombo 07.

18J. Hon. Ali Sabry
Minister of Foreign Affairs
Republic Building,
Sir Baron JayathilakeMawatha,
Colombo 01.

18K. Hon. Sarath Weerasekara
(ceased to hold office)
Minister of Public Security
Ministry of Public Security,
14th, Floor, "Suhurupaya"
Battaramulla.

18L. Hon. Tiran Alles, M.P.
Minister of Public Security
Ministry of Public Security
437, Galle Road,
Colombo 03.

18M. Hon. Kachchakaduge Nalin
Ruwanjiwa Fernando, M. P.
Minister of Trade,
Commerce and Food Security
Ministry of Trade,
Commerce and Food Security
No. 27, CWE Secretariat Building

Vauxhall Street,
Colombo 02.

18N. Hon. Jeevan Thondaman, M.P.,
Minister of Water Supply,
Ministry of Water Supply,
No. 35, “Lakdiya Medura”,
New Parliament Road,
Pelawatte,
Battarmulla.

18O. Hon. Pavithra Devi Wanniarachchi
Minister of Wildlife & Forest
Resources Conservation,
Minister of Irrigation,
No. 500, 10th Floor,
T. B. Jaya Mawatha,
Colombo 10.

19. Honourable Attorney General
Attorney General’s Department
Colombo 12.

20. Secretary to the Cabinet of
Ministers
Office of the Cabinet of Ministers
Republic Building
Sir Baron Jayathilaka Mawatha,
Colombo 01.

Respondents

Before : **Hon. M Sampath K. B Wijeratne, J.(CA)**

: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel: Shantha Jayawardena with Chamara
Nanayakkarawasam for the Petitioners.

Manohara Jayasinghe D.S.G. with
Amasara Gajadeera S.C. for the
Respondents.

Written Submissions : 17.05.2024 (by the Respondents)
20.05.2024 (by the Petitioners)

Argued on : 03.04.2024

Decided on : 06.06.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Petitioners had filed this application on 1st July 2020 seeking a Writ of Certiorari and Writ of Mandamus to obtain the reliefs sought in the prayer of the petition.
- 2) The said reliefs are as follows;
 - a) Issue notices on the Respondents;
 - b) Call for and examine the entire record pertaining to the subject matter of this application, including the cabinet decision dated 02.01.2020 referred to in P5 and the relevant cabinet memorandums pertaining to same;
 - c) Grant and issue an order in the nature of Writ of Certiorari quashing P5;
 - d) Grant and issue an order in the nature of Writ of Certiorari quashing the decision contained in P5 to suspend the operation of Public Administration Circular No. 35/2019 dated 10.12.2019;
 - e) Grant and issue an order in the nature of Writ of Mandamus directing the 1st to 3rd Respondents to revise the monthly pension of public officers who retired during the period from 01.01.2016 to 31.12.2019, in terms of Clause 5 of P2 read with Public Administration Circular No.35/2019 dated

10.12.2019 and the respective Awards of Pension issued to such retired officers;

- f) Grants costs;
- g) Grant such other any further reliefs.

Background of the Petitioner's case

- 3) There are 94 Petitioners in the caption of the petition who were public officers who held permanent pensionable posts in the Public Service and retired during the period between 1st January 2016 to 31st December 2019.
- 4) The Petitioners have contended, as Public Servants they are entitled for a pension upon fulfilling the relevant criteria stipulated in the minutes on pensions and the relevant Circulars issued from time to time by the Secretary to the Ministry of Public Administration and Director General of the Department of Pensions.
- 5) The Petitioners have emphasized that the Public Administration Circular No. 3/2016 (hereinafter referred to as PAC 3/2016) dated 25th February 2016 which is marked and produced as P2 replaced the salary scale introduced by the Public Administration Circular No.6/2006 dated 25th April 2006.
- 6) Schedule II of the PAC 3/2016 had demonstrated the new salary scales introduced that were to be implemented in 5 phases from 1st January 2016 to 1st January 2020.
- 7) As per clause 5 of the PAC 3/2016, pension of the officers who retire shall be revised accordingly and instruction with regard to the revision shall be issued in due course by the relevant authority. This fact is emphasized in the relevant Circular.

However, no revision shall be made in the pension during the period from 1st January 2016 to 31st December 2019.

- 8) The contention of the Petitioners is, as they have retired during the period of 1st January 2016 to 31st December 2019, the applicable Circular is PAC 3/2016.
- 9) Therefore, as per the said Circular their pension should be increased accordingly.
- 10) The issue pertinent to this application had arisen after the 1st Respondent issued the Public Administration Circular No. 35/2019 (hereinafter referred to as PAC 35/2019) dated 10th November 2019 which is marked and produced as P4.
- 11) As per the P4 document (PAC 35/2019) Cabinet Ministers had decided on 11th November 2019 to consider the pension of the officers who retired during the period between 1st January 2016 and 31st December 2019 shall be revised based on the salary as at 1st January 2020.
- 12) On that the revised pension shall be paid with effect from 1st January 2020.
- 13) Subsequently, the 1st Respondent issued Public Administration Circular No. 35/2019(i) (hereinafter referred to as PAC 35/2019(i)) which is marked and produced as P5 dated 20th February 2020 stating Cabinet Ministers had decided in a meeting held on 2nd January 2020 to suspend the operation of the PAC 35/2019 dated 10.12 2019 until the anomalies pertinent to all pensioners are resolved according to the policies of the new government.
- 14) In respect of the said P5 Circular, the 95th Petitioner on behalf of the 1st to 94th Petitioners had sent letters to the President and Prime Minister to withdraw the said PAC 35/2019(i) stating the hardship they faced due to the suspension.

- 15) Further the said Petitioner had demanded from the 1st Respondent to revise the pension scheme in terms of PAC 3/2016 and PAC 35/2019.
- 16) As the Petitioners had not received any positive reply, the contention of the Petitioners is the decision contained in PAC 35/2019(i) is *ultra vires*, arbitrary and unreasonable.
- 17) On the said grounds, the Petitioners have sought reliefs from this court to invoke the Writ Jurisdiction.

Facts pertinent to the objections of the 1st to 20th Respondents

- 18) The Respondents had taken the following three preliminary objections against the application made by the Petitioners;
 1. The Petitioners' application is futile
 2. The Petitioners are guilty of laches
 3. The Petitioners' petition is misconceived and/or wrongful in Law
- 19) The Respondents have contended as per clause 5.1 of the PAC 3/2016 stipulates that the pension of Public Officers who retire after 1st January 2016 would be calculated based on the last salary point received as at the time of retirement.
- 20) However, clause 5.2 of the PAC 3/2016 had specified salary scales stipulated will be fully implemented (i.e. - after 01.01.2020). Further it had stated the said revision will take place only on further instructions received in respect of the same.
- 21) However, in the said Circulars R4 and R5, had indicated that the pension payable, pursuant to the possible revision as reflected in item XIII of the award of pension was included for ease of administration.

- 22) The PAC 35/2019 had been issued in order to give effect to the aforesaid Cabinet decision. Subsequently the Cabinet had decided to suspend the operation of P4 Circular.
- 23) On the said grounds, the Respondents have pleaded PAC 35/2019(i) gives effect to a public policy decision that was taken by the Cabinet of Ministers and the said Cabinet decision is marked as R7. The R7 decision is not amenable to the Writ Jurisdiction.
- 24) Thus, the Respondents had moved to dismiss the application made by the Petitioners.

Disputed facts

- 25) This matter was taken up for argument on 3rd April 2024. Counsels representing the Petitioners and the Respondents concluded their argument.
- 26) Considering the facts, documents and the arguments put forward by the Counsels, I will draw my attention to the following points to arrive at my conclusion
- I. Has the 1st Respondent issued Circulars P2 and P4?
 - II. Are the Petitioners entitled to receive their pension as per P2 and P4?
 - III. Has the 1st Respondent issued a Public Administration Circular 35/2019(i) marked as P5?
 - IV. If so, are the Petitioners entitled to receive their pension in accordance to the P2 and P4 Circular or should it be suspended by P5 Circular?

I. Has the 1st Respondent issued Circulars P2 and P4?

- 27) The main contention of the Petitioners is that the Secretary to the Ministry of Public Administration and Management had issued PAC 3/2016. By the said Circular it has specified revision of the salaries in the Public Service. The annexure to the said salary Circular, the salary structure for the Public Service had categorized that the Public Servants are entitled for the said salary structure.
- 28) Subsequently, the secretary to the Ministry of Public Administration had issued PAC 35/2019. In the said Circular it is stated the Public servants who are retiring after 1st January 2016 and before 1st January 2020 and/or who are entitled to retire during that period, are entitled to get their retirement pension on the revised base as at 1st January 2020 contained in Schedule 1 of the PAC 3/2016.
- 29) In P4 Circular it is specified that the said revised pension shall be paid with effect from 1st January 2020. The said Circular P4 had been issued after the Cabinet decision made on 11th November 2019.
- 30) Therefore, the said two Circulars have correctly demonstrated the revised pension of the officers who retired during 1st January 2016 to 1st January 2020.
- 31) On the said circumstances, it is obvious that the 1st Respondent had issued P2 and P4 Circulars.

II. Are the Petitioners entitled to receive their pension as per P2 and P4?

- 32) As I have discussed above the P2 revision of service in the Public Service Circular had been issued on 25th February 2016.
- 33) Based on P2 Circular the Cabinet had decided on 11th November 2019 the Public Officers who retired from service during the period between 1st January 2016 to 31st December 2019 are entitled for their revised pension, based on the salaries as at 1st January 2020 contained in schedule 1 of P2 Circular. The said revised pension should be paid with effect from 1st January 2020.
- 34) The P4 Circular was issued on 10th December 2019. On the face of it as per the P4 Circular until the said Circular is valid the Petitioners were entitled to receive retirement pension based on the P4 Circular.

III. Has the 1st Respondent issued a Public Administration Circular 35/2019(i) marked as P5?

- 35) The 1st Respondent had issued PAC 35/2019(i) on 20th January 2020. This Circular had been issued after issuing the P4 Circular on 10th December 2019. It seems the said Circular had been issued within a period of one month and ten days from the latter.
- 36) By the said Circular the cabinet had decided to suspend the PAC 35/2019 which is marked and produced as P4. The dispute in the instant action had arisen after the issuance of the P5 Circular suspending the P4 Circular.
- 37) The Counsel for the Petitioners argued that the said Circular is irrational and unreasonable for suspending the revised Pension

Scheme. And the said impugned decision is a policy decision, and policy decisions are not immune from judicial review. However, the Deputy Solicitor General who appeared for the Respondents argued that the policy decisions cannot be challenged in this court and court should refrain from interfering with it by issuing the reliefs sought by the Petitioners.

- 38) On the said grounds it is obvious that the P5 Circular had been issued by the 1st Respondent after the cabinet had taken the decision on 2nd January 2020.

IV. If so, are the Petitioners entitled to receive their pension in accordance to the P2 and P4 Circular or should it be suspended by P5 Circular?

- 39) On the face of P2 and P4, the Petitioners are entitled for a revised pension. However, within a short period of time the P5 Circular had been issued and suspended P4 Circular.
- 40) On perusal of R8 and R9 documents, the Cabinet had observed in the event an increased revised pension is granted to a particular category of government servants it may lead to an anomaly in the pensions.
- 41) Further, the said decision had been taken in the cabinet memorandum based on the impending changes of government policy rectifying all anomalies of the pension scheme.
- 42) On the said grounds by R8 cabinet memorandum the P2 and P4 Circulars had been suspended. When observing R6, R7, R8, R9 documents, specifically the R8 document emphasized and justified the decision taken by the cabinet. It is specified in the said

document; in the event the pension is increased for one category it may lead to an anomaly in the pensions.

- 43) In relation to that I draw my attention to the judgement in the case of ***M.K.B. Herath v A. Jagath D. Dias***¹. In the said judgement Justice Karalliyadde was of the view that the Petitioner does not have a right to demand to adjust his pension. For the reasons given in that case he had sighted ***Gunawardene v Attorney General***²;

“Rule 1 expressly provides that public servants have no absolute right to any pension or allowance under these rules”

- 44) In that case it is analyzed; the Public Servants are not entitled for pension as an absolute right in terms of the regulations of the minutes of pensions. I reproduce paragraph 01 of page 11 of Justice Karalliyadde’s judgement as follows;

“It is evident from the above stated case laws that, a Writ Mandamus to claim the Petitioner must have a legal right and the Respondents should have a corresponding public duty to perform towards the Petitioner. Since the Petitioner in the instant application has no legal right to get his pension adjusted in terms of the P9 and the Respondents have no public duty to adjust his pension

¹ CA(Writ)Application 38/2020

² 47 NLR 359

provided in P9 he is not entitled to Writ of Mandamus.”

- 45) On the said expression it is obvious, government servants do not have an absolute right or entitlement for pension.
- 46) Beside these facts, I draw my attention to the two Indian judgements referred to in the synopsis of the Respondents;

In ***Sidheswar Sahakari Sakhar Karkhana Ltd v Union of India***³;

It was held;

“Normally the Court should not interfere in policy matter which is within the purview of the government unless it is shown to be contrary to law or inconsistent with the provisions of the Constitution”

In ***Ugar Sugar Works Ltd v Delhi Administration and others***⁴ the Indian Supreme Court observed;

“It is well settled that the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions of the Executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of

³ (2005) 3 SCC 369

⁴ (2001) 3 SCC 635

these grounds, the mere facts that it would hurt business interests of a party, does not justify invalidating the policy.”

- 47) In the said judgements the Indian Supreme Court had observed that Court should not interfere in policy matters unless it is shown to be contrary.
- 48) As per the aforesaid judgements, court should not exercise their power of judicial review and interfere with the policy decisions of the executive. The said policy decisions can be faulted on the grounds of mala fide, unreasonableness, arbitrariness or unfairness.
- 49) In the instant application, R8 cabinet memorandum had been issued to consider the anomalies and to correct it.
- 50) On the said grounds, if the P2 and P4 pension scheme is allowed to operate there will be prejudice caused to the other categories of the pensioners. I am of the view this court cannot allow such an event to take place until the government takes a correct policy decision to rectify the anomalies. His Lordship Justice J.A.N. De Silva, in the case of **Credit Information Bureau of Sri Lanka v Messers Jafferjee and Jafferjee (Pvt) Ltd**⁵ had taken the following position;

“There is rich and profuse case law on mandamus, on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appears to be;

⁵ 2005(1) SLR Page 89

a) *The application must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought...the foundation of mandamus is the existence of a legal right.*

b) *The right to be enforced must be a “public right” and the duty sought to be enforced must be of a public nature”...*

It was further stated by His Lordship Justice J.A.N. De Silva that;

“Whether the facts show the existence of any or all pre-requisites to the granting of the Writ is a question of law in each case to be decided, not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. The Court will not grant a Mandamus to enforce a right not of a legal but purely equitable nature however extreme the inconvenience to which the applicant might be put.”

51) In the case of ***Kaluarachchi v Ceylon Petroleum Corporation and others***⁶ Fernando J stated;

“The foundation of Mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce

⁶ SC Appeal No. 43/2013; SC Minutes of 19th June 2019

a right which is not legal and not based upon a public duty”.

- 52) In the aforesaid cases, it is decided Writ of Mandamus could be issued when a legal right of the Petitioner is violated and the Respondents should have a corresponding Public Duty to Perform towards the Petitioner.
- 53) In the instant application of the Petitioners, as I have stated above the Petitioners have failed to prove that a legal right which they are entitled for by P2 and P4 is violated by the Respondents.
- 54) On the said grounds I do not see any reason to issue Writ of Mandamus and /or Writ of Certiorari to quash the P5 document.
- 55) Beside these facts, I do not see any merit to consider the three preliminary objections raised by the Respondents and based on the facts above I have decided that the Petitioners cannot seek any reliefs under the Writ Jurisdiction

CONCLUSION

- 56) In view of the aforesaid facts, documents and written submissions, I dismiss the petition dated 1st July 2020.
- 57) No cost ordered.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree

Judge of the Court of Appeal

