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

In the matter of an application for a writ of Mandamus, under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A Writ/230/2020

Prof. Emeritus W. M. M. P. Wijeratne,
No.215/1, Sri Sara Mawatha,
Walgama,
Matara.

Petitioner

Vs.

1. Senior Prof. Sujeewa Amarasena
   The Vice Chancellor
   University of Ruhuna,
   Wellamadama,
   Matara.

2. University of Ruhuna
   Wellamadama,
   Matara.

3. The Commissioner General of Labour
   Labour Secretariat,
   Kirula Road,
   Colombo 05.

4. Registrar
   University of Ruhuna,
   Wellamadama,
   Matara.

5. Senior Professor Sampath Amaratunge
   Chairman, University Grants Commission,
   No.20, Ward Place,
   Colombo 07.

6. University Grants Commission,
   No.20, Ward Place,
   Colombo 07.

Respondents

Before	:	Dhammika Ganepola, J. Damith Thotawatta, J.
Counsel	:	Dr. Sunil Cooray with N. Kariyawasam instructed by Nilanga Perera for the Petitioner. Manohara Jayasinghe, DSG for the Respondents.
Argued on	:	07.02.2025
Written Submissions tendered on	:	Respondent : 20.02.2025, 14.03.2025
Decided on	:	30.04.2025

Dhammika Ganepola, J.

In the instant application, the Petitioner seeks in the nature of a Writs of Mandamus, directing the 1st to 3rd Respondents to include the "Academic Allowance" in calculating the Petitioner's gratuity, directing the 1st to 3rd Respondents to pay the relevant amounts due as gratuity under law to the Petitioner and directing the 3rd Respondent to take all necessary steps against the 1st and 2nd Respondents under Section 8 of the Payment of Gratuity Act, No.12 of 1983 to recover gratuity in default and remaining unpaid to the Petitioner.

It is stated that the Petitioner was a Senior Professor of Agricultural Economics at the University of Ruhuna and had gone on retirement on 08.01.2018 after 39 years of service. It is further averred that in calculating the University Provident Fund of the Petitioner, the employees' basic salary, cost of living and academic allowance had been taken into consideration. However, it is stated that in calculating the Petitioner's gratuity under the Payment of Gratuity Act (hereafter referred to as the Act), the 'Academic Allowance' of the Petitioner had not been included at the time of his retirement.

As per Circular No. 05/2019 dated 04.06.2019(marked P6) issued by the University Grant Commission(UGC), Academic Allowance should be taken into consideration in calculating the gratuity in terms of the Act for the Academic Staff with effect from 01.06.2019. The academic staff who retired prior to 01.06.2019, including the Petitioner, had not received the benefit of the above Circular. The Petitioner contends that the Academic Allowance also should be considered as forming part of "wages or salary" for the purpose of the computation of gratuity as specified in the provisions in Sections 6(2)(a) and 20 of the Act, and the same benefit should be offered to the Petitioner. The Petitioner claims that the 1st to 3rd Respondents' failure to act accordingly and pay the gratuity to the Petitioner is unreasonable, arbitrary and capricious.

The law relating to payment of gratuity is governed by the Payment of Gratuity Act. Section 6 of the Act lays down the formula for the purpose of calculating the gratuity based on the rate of wage or salary last drawn

by the employee. The term “wage or salary” is defined in the Interpretation Section, Section 20 of the Act as follows:

> *" wage or salary " means,*
>
> *(a) the basic or consolidated wage or salary;*
> *(b) cost of living allowance, special living allowance or other similar allowance; and*
> *(c) piece rates.*

The Petitioner contends that the Academic Allowance is an allowance which falls under the purview of the term “similar allowance” referred to in the above interpretation. The learned Deputy Solicitor General who appears for the Respondents stated in the written submission that it was never the contention of the learned Counsel for the Petitioner, that the academic allowance falls under the general category in paragraph (b) of the above interpretation, but the academic allowance was integral to the salary under paragraph (a). However, I am unable to agree with such submission as it could be observed upon the plain reading of the Petition that the Petitioner’s main contention was that when calculating the gratuity of the Petitioner, “Academic Allowance” should be included as it falls under other special and similar allowances as per Section 20 of the Act. [see paragraph 26 of the Petition]

As per (b) above, only an allowance similar to a “living allowance” but not “all” allowances should be considered in calculating the gratuity. The term “Academic Allowance” has not been specifically referred to in the above paragraph (b). In considering whether the Academic Allowance could be included under the above paragraph (b) above, attention is drawn to the *Latin maxim, enumeratio unius est exclusion alterius,* which is a rule observed in the construction of Writs or Acts of Parliament, means that the special mention of one thing operates to the exclusion of anything different from the expressed. Thus, where the terms “*cost of living allowance”* and “*special living allowance”* have been specifically mentioned while the term “*Academic Allowance*” has not been specifically referred to in the Section, the interpretation of the term

"*wage or salary*" should be construed to not include the "*Academic Allowance*".

Cost of living allowance or special living allowance is to be considered as the amount of money that an employee gets in addition to his or her normal pay to cover the additional living costs incurred. Ex facia, an academic allowance is an allowance paid to cover the cost incurred for academic purposes during the occupation of the employee. It is my view that, contrary to the living allowance, an academic allowance paid to university academic staff does not contribute to subsistence or sustenance to their livelihood in any manner. The rule of interpretation, *ejusdem generis* rule, provides that where specific words are followed by general words, the general words should be interpreted in the context of the specific words that precede them. As such, I hold that an Academic Allowance cannot be construed as a "*cost of living allowance, special living allowance or other similar allowance*" in calculating the gratuity in terms of the Act and that there is no obligatory requirement in law to count an academic allowance in calculating gratuity in terms of the Act.

It is also observed that the UGC has issued a Circular marked P6, establishing a requirement to count the Academic Allowance in calculating gratuity in terms of the Act with effect from 01.06.2019. The said Circular does not specify that the same shall apply with retrospective effect. In the case of R.A. Dharmadasa vs. Board of Investment of Sri Lanka (SC Appeal No: 13/2019, S.C. Minutes dated 16.06.2022), the Supreme Court held that:

> "*If it was the intention of the Director General of the Respondent that the said condition should apply with retrospective effect, then, there should have been a specific reference to that effect, which is not the case.*"

In the instant application, the Circular P6 does not specify that the provisions shall apply retrospectively. Nor do the words contained therein enable this Court to come to the conclusion that the Commission intended the said Circular P6 to apply with retrospective effect. Thus, this Court is of the view that the said Circular P6 has no retrospective

application and that the provisions therein shall have no application in calculating the gratuity of the Petitioner.

However, the learned Counsel for the Petitioner took up a stance at the stage of the argument that the UGC has no authority or power to decide or to fix a date to implement a date as specified in the Circular P6, giving prospective effect. Although the Petitioner stated that the same benefit should be offered to the Petitioner who retired on 08.01.2018 before said Circular P6 came into effect, the Petitioner has failed to challenge the validity or correctness of the said Circular P6 based on the date of effect of the said Circular P6 nor has the Petitioner in his Petition sought any reliefs accordingly. Hence, I see no need to consider such an aspect under the instant application.

In the foregoing reasons, I am not inclined to grant any of the reliefs prayed for in the Petition of the Petitioner, and I proceed to dismiss the application without cost.

Application is dismissed.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal