

**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.

Hennayake Arachchige Somasiri
Senanayake,
No. 179/19B, Retirement Home,
Mahagedarawatte,
Kadawatha.

PETITIONER

C.A. Case No. WRT/0583/25

Vs.

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

RESPONDENT

BEFORE : K.M.G.H. KULATUNGA, J

SUPPORTED ON : 03.07.2025

DECIDED ON : 15.07.2025

ORDER**K.M.G.H. KULATUNGA, J**

1. The petitioner appeared in person and moved to support this application on 13.06.2025. However, as the petition was incomplete and did not contain any prayer seeking a writ or other relief, time was granted for the petitioner to obtain the services of the Legal Aid if necessary, and permission was also granted to tender an amended petition in the proper form. Accordingly on 01.07.2025, the petitioner did submit a petition in the proper form, supported by an affidavit, upon obtaining the advice and assistance of an Attorney-at-Law. However, the petitioner expressed his desire to support this matter in person by himself and accordingly on 03.07.2025 he was heard in support of this application. The petitioner also, upon his request, was heard in the Sinhala language.
2. According to the prayer, the petitioner is seeking the following substantive relief: “*(b) a writ of certiorari to quash the decision of the People’s Bank for stopping payment of Cost of Living Allowance together with the pension of the applicant*”; and “*(c) a writ of mandamus to compel the People’s Bank to pay the applicant a Cost of Living Allowance together with the pension until his death.*” Accordingly, the petitioner is seeking a writ of *certiorari* to quash a purported decision by which the 1st respondent bank is alleged to have stopped the payment of the Cost of Living Allowance (CLA) and also a writ of *mandamus* to compel the 1st respondent bank to pay the said CLA.

Facts

3. The petitioner had been an employee of the People’s Bank since 15.07.1963 and reached the age of retirement (55 years) in 1995. However, upon successfully obtaining extensions, he had continued until 31.03.1997, on which day the petitioner retired from the 1st

respondent bank. At that point, he was a Grade 3 (I) Branch Manager. From April 1997, he had received his pension in accordance with the Pension Scheme under the Trust Deed No. 7415 (X-14). By X-14, the 1st respondent bank and its employees have created a trust incorporating *inter alia* the Pension Scheme and regulations to create the Pensions Fund applicable to employees of the Bank, who were or are deemed to be in permanent pensionable service of the Bank, as at the first day of January, one thousand nine hundred and ninety-five, and those who are recruited to such employment thereafter. This Trust Fund and the Pension Scheme has been executed on 07.09.1995. Accordingly, the said Pension Scheme is applicable to all employees who were in service as at 01.01.1995.

4. The petitioner, having reached the usual age of retirement, on 08.06.1995, has opted to continue until 31.03.1997. Therefore, the petitioner has been an employee as at 01.01.1995, and his pension entitlement was determined and regulated in accordance with the said scheme. The Pension Scheme under the trust document X-14 does not provide for or refer to any Cost of Living Allowance. On a perusal of the petition, it appears that the petitioner relies on the entitlement to the CLA based on a General Circular of the 1st respondent bank bearing No. 380/76 (10) which he avers that the effective implementation was from 01.01.1980. The petitioner then avers that this Circular has not been repealed and thus claims that it was withheld from him upon his retirement. The petitioner admits receiving the CLA until the date of his retirement.
5. The petitioner appears to have accepted and continued to receive his pension in accordance with the Trust Deed and as per the Pension Scheme from April 1997 under the said Trust Deed (X-14). At a later point of time, he appears to have agitated for the CLA. The basis of his claim is that several other employees who served with him, and also

were subordinate employees, receive the CLA. A list of 08 names is stated in document X-12, which is captioned as being a list of his contemporaries who retired prior to 06.07.1996 and who receive the CLA. The petitioner has also annexed two affidavits from one such person in the said list, namely D.M. Goonewardene. Paragraphs 11, 12, and 13 of the petition refers to Goonewardene, K. Mallawarachchi, and N. Balasuriya, who he claims to be is similarly circumstanced as the petitioner, but are recipients of the CLA.

6. I have carefully perused the said paragraphs of the petition, with the supporting documents X-04, X-07, and X-12, and observe that the dates of retirement of the said persons named therein are not disclosed except that of Goonewardene. The said Goonewardene had retired on 30.03.1993. Then, the list referred to in paragraph 14 does not specifically state if these persons retired before or after 01.01.1995. The petitioner has also submitted that the said persons referred to are all recipients of the CLA and in support, copies of some Pensions Advice Notices have been annexed. From the material annexed and tendered, it is apparent that those who retired before 01.01.1995 were granted their pensions and retirement benefits on a different scheme applicable at that point of time, which also included Circular No. 380/76 (10). Therefore, such persons who retired before the said terminal date (01.01.1995) may have been entitled to receive the CLA under and by virtue of the said Circular.
7. The petitioner has failed to produce the said Circular and there is no specific averment or submission that the said Circular will continue to apply to persons who retired after 01.01.1995, whose pension entitlement is determined under the Scheme as provided for by the Trust Deed X-14. There is no direct averment that any person who had retired after 01.01.1995 has received the CLA. X-14 (the Pension Scheme under the Trust) does not expressly provide for the CLA as

claimed by the Petitioner either. That being so, the petitioner has failed to place before this Court any material or basis on which he is entitled to the CLA as claimed.

8. Accordingly, the petitioner has not tendered any document or refer to a decision by which the respondent is alleged to have stopped payment of the CLA paid to his upon his retirement. In the absence of such a decision there is no order to be quashed by a *certiorari*. The existence of an order or determination is a pre requisite to issue a writ of *certiorari*. A divisional bench of 5 judges of the Supreme Court in **G. P. A. Silva and Others vs. Sadique and Others** (1978-79-80) 1 Sri L. R. at page 172 opined that:

"From the citations which I have set out, it would appear that a Writ of Certiorari would lie in respect of an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect."

Thus there should be a decision for a writ of certiorari to lie. In the instant case, there is no averment by the petitioner that he was entitled to the CLA after his retirement under the Pension Scheme under X-14 and there is no decision to stop the CLA. Accordingly, there is no decision to quash as claimed by prayer (b).

9. Further, Samayawardhena, J., in **Walli Amma Neelamegam vs. Land Reform Commission** (CA/Writ/264/2016, decided on 25.07.2018), held as follows:

"For this Court to issue a writ of mandamus ... the petitioner shall satisfy this Court that she has a legal right to the performance of

that legal duty by the respondent. If no such legal right with corresponding legal duty can be established, no mandamus will lie. Mandamus is not meant to create a legal right but to restore a party who has been denied that right.”

Thus, in the absence of any evidence or material to establish an entitlement or a legal right to receive the CLA the petitioner is not entitled to a *mandamus* as prayed for by paragraph (c).

10. I also observe that along with the original petition, the petitioner has annexed an Order of the Supreme Court in **SC/FR/112/2023**. It appears that the petitioner has agitated this same matter before the Supreme Court, and their Lordships of the Supreme Court on 10.10.2024 had heard the petitioner and refused leave to proceed.

Delay

11. The petitioner admits receiving his pension from April 1997 sans the CLA. This application for a writ is now preferred in 2025 seeking *inter alia* a *mandamus* directing the payment of the purported CLA. There is no explanation for the delay. It is astonishing that 28 years after the event the petitioner has thought it fit to agitate this matter. The petitioner is guilty of laches and delay. In **Gunasekera vs. Abdul Latiff** [1995] 1 Sri L.R., at page 235, Ranaraja, J., defined 'laches' as below:

“The word ‘laches’ is a derivative of the French verb ‘Lacher,’ which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. (Stroud’s Judicial Dictionary 5th Ed. Pg. 1403.) It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle “vigilantibus non dormientibus jura subveniunt” (the law helps those who are vigilant, not those who sleep on their rights).

The neglect to assert one's rights or the acquiescence in the assertion or adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg. 260)."

As per Lord Camden in **Smith vs. Clay** (1767) S. C. 3 Bro. C. C. 639, a Court of Equity,

"...has always refused its aid to stale demands where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence; where these are wanting, the court is passive and does nothing."

Further, In **Bisomenike vs. C. R. de Alwis** (1982) 1 SLR-368, Sharvananda, J., (as he then was) observed that,

"A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver. The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filed within a reasonable time."

The delay on the part of the petitioner is extensive for which there is no explanation.

Conclusion

12. In the above premises the petitioner has failed to establish the existence of any decision to stop the payment of the CLA, and also failed to place any material to establish that he has a right to receive a CLA as at the date of his retirement. The above, considered with the delay, completely and totally disentitles the petitioner to receive any discretionary relief as prayed for. Thus, I see no basis in law or other wise to issue notice as prayed for. This Court is left with no option but to refuse the issuing of notice to the respondent.
13. Accordingly, notice is refused and this application is rejected and dismissed.

JUDGE OF THE COURT OF APPEAL