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

In the matter of an application for mandates in the nature of writs of certiorari and prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. CASE NO. WRT/0361/21

1. Anura Kumara Madurawala
   No. 70/2, Samarathunga Mawatha,
   Yakkala Road, Gampaha.

2. Peramunage Sunil Devapriya Rajasiri
   No. 178, Vijaya Rajadahana,
   Mihirigama.

3. Rohitha Malwatta Mohotti
   No. 9/281, Boralugoda,
   Athurugiriya.

4. Lokukaththotage Don Lesley Abhaya Gunawardhana
   Abhaya Sewana, Kospillewa, Temple Road
   Udugampola.

5. Rajapaksha Dona Sandyani
   Sepalika Arunasiri, No.36/2,
   Kumarathunga Mawatha,
   Gampaha.

6. Weerasinghe Gampatheenge Saman
Priyadarshana
No. 15/27, Wickramarachchi Mawatha,
Yakkala.

7. Dharmadasa Dambure Liyanage,
No. 3/307 A, Mihindu Mawatha,
Makola, Kadawatha.

8. Liayana Pathiranage Wijesiri,
No. 6/5, Elhenawatta Road, Bekkegama,
Panadura.

9. Ranasinghe Arachchige Chandralatha
Madanayake
No. 159, Athurugiriya Road,
Homagama.

10. Appukutti Arachchige Wijewardena ,
No. 8/24, Samanala Pedesa,
Galawilawaththa,
Homagama.

11. Rajapaksha Malthewage Prema Perera
"Kedella", Daningamuwa, Millaniya,
Horana.

12. Kurukulasuriya Rogar Fernando
Suhada Mawatha, Methpawila, Lot.29,
Weerahena West,
Marawila.

13. Hewa Warawitage Sunil

No. 385, Jathika Tharunasewa Sabha
Road, Makola South, Makola.

14. Weliwitage Dona Indrawathie
Chandrasena,
"Lanka", Malegoda,
Payagala.

15. Meera Mohideen Mahumood Lebbe,
No. 214, Zahira Manzil,
Jumma Mosque,
2nd Cross Road, Oddamavadi.

PETITIONERS

Vs.

1. The Monetary Board of the Central Bank of Sri Lanka.

1A. The Central Bank of Sri Lanka.

2. Prof. W.D.Lakshman
Chairman - the Monetary Board of the Central Bank of Sri Lanka
Governor – the Central Bank of Sri Lanka.

2A.Dr P. Nandalal Weerasinghe
Chairman – the Governing Board of the Central Bank of Sri Lanka
Governor - the Central Bank of Sri Lanka.

3. Mr. S.R. Attygalle
Official Member – the Monetary Board of the Central Bank of Sri Lanka

Secretary to the Treasury and Ministry of Finance.

3A. Nihal Fonseka
Appointed Member - the Governing Board of the Central Bank of Sri Lanka.

4. Mr. Sanjeewa Jayawardena, PC
Appointed Member - the Monetary Board of the Central Bank of Sri Lanka.

4A. Dr. Ravi Rathnayake
Appointed Member - the Governing Board of the Central Bank of Sri Lanka.

5. Dr. (Mrs.) Ranee Jayamaha
Appointed Member – the Monetary Board of the Central Bank of Sri Lanka.

5A. Anushka Wijesinha
Appointed Member - the Governing Board of the Central Bank of Sri Lanka.

6. Samantha Kumarasinghe
Appointed Member – the Monetary Board of the Central Bank of Sri Lanka.

6A. Vish Govindasamy
Appointed Member - the Governing Board of the Central Bank of Sri Lanka.

6B. Rajeev Amarasuriya
Appointed Member - the Governing Board of the Central Bank of Sri Lanka.

6C. Manil Jayesinghe
Appointed Member - the Governing Board of the Central Bank of Sri Lanka.

(1st to 6th Respondents, all of the Monetary Board of the Central Bank of Sri Lanka, No. 30, Janadhipathi Mawatha, Colombo 01)

(1A to 6C Respondents all of the Central Bank of Sri Lanka, No. 30, Janadhipathi Mawatha, Colombo 01)

7. Human Rights Commission of Sri Lanka,
No. 14, R.A. De Mel Mawatha,
Colombo 4.

RESPONDENTS

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

COUNSEL : Saliya Pieris PC with Rukshan Mendis and Kaneel Maddumage for the Petitioners.

Sehan Soysa SSC for the Respondents.

SUPPORTED ON : 04.09.2025

DECIDED ON : 08.09.2025

ORDER

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

1. This application was taken up for support on 04.09.2025; both learned Counsel were heard, and this order is thus made on the issuing of notices.

2. The petitioners were employees of the Central Bank of Sri Lanka. All of them have been victims who were injured and permanently disabled due to the bomb explosion that occurred on 31.01.1996. Upon suffering the said disabilities and being so declared by a medical board, they were offered compensation and other benefits by a Circular dated 18.10.1996. This Circular provided for two Schemes, Scheme “C” and Scheme “D”, to grant and award compensation to such disabled employees. The petitioners have opted for and accepted Scheme “D”, according to which they have received 5 years’ salary with all allowances as a lump sum payment as compensation in lieu of full salary and allowances up to the age of retirement under Scheme “C”. They also have received a monthly pension from the date of such disablement as per the rules of the Central Bank Pension Fund. The pension was calculated on a hypothetical retirement salary. The pensions so paid were calculated on the basis of the last drawn salary and the age at retirement.

3. The petitioners, having so opted for Scheme “D”, have subsequently requested that the relevant salary increments, salary revisions, and increases based on promotions which they would have been entitled to until 55 years of age, and other emoluments and allowances be considered in formulating their entitlement under Scheme “D”. It is admitted that upon so opting, the Central Bank did make payment of the hypothetical retirement salary as per the Circular P-1A.

4. Then, the petitioners have complained to other authorities, such as the President and the Minister of Finance, and also have been

corresponding with the Governor of the Central Bank. As all their attempts and representations were not successful as expected, the petitioners have, on 30.10.2017, made a complaint to the Human Rights Commission of Sri Lanka (HRCSL). The HRCSL has held an inquiry and issued a report dated 24.08.2020 with several observations and recommendations on the basis that the fundamental rights guaranteed under Article 12 (1) of the Constitution have been infringed. A copy of the said recommendations has been tendered marked P-11. As submitted by the petitioner, the recommendation is that the hypothetical retirement salary should be calculated after correctly taking into account the relevant salary increments, increases/revisions and their allowances and benefits, and the pensions of the petitioners should be decided based on the said corrected retirement salary. It was also directed that the said revised pension and arrears should be paid within four months.

5. The petitioner by this application is now seeking a writ of *mandamus* against the 1st – 6th respondents for the implementation of the said HRCSL recommendation. Further thereto, the petitioners are also, by prayers *(c)* and *(d)* seeking further writs of *mandamus* against the 1st – 6th respondents to recalculate the hypothetical retirement salaries of the petitioner as mentioned in Scheme "D" of the Circular bearing No. S/F/COMP/1, dated 18.10.1996 (P-1A), and also a *mandamus* directing the 1st–6th respondents to pay the petitioners all arrears they are entitled to on the recalculated pension.

6. When considering the relief sought, it is apparent that prayer *(b)* seeks the enforcement and implementation of the HRCSL recommendation. Relief prayed for by prayers *(c)* and *(d)* is independent of the abovesaid recommendation and is to recalculate the hypothetical retirement salary and for arrears.

7. The respondents have filed limited objections, according to which the respondents are resisting the issue of notices on the following bases:

i. suppression of material facts;
ii. laches/delay on the part of the petitioner; and
iii. that a writ of *mandamus* cannot be issued to compel the 1st – 6th respondents to enforce an HRCSL recommendation.

I will now consider these grounds raised during the course of the submissions.

Enforcement of a HRCSL recommendation

8. The Human Rights Commission, established by the Human Rights Commission of Sri Lanka Act No. 21 of 1996, is empowered on the receipt of a complaint to investigate any infringement or imminent infringement of any fundamental right by Section 11 (a) of the said Act. Then Section 15 provides that where an investigation conducted by the Commission discloses any infringement or imminent infringement of a fundamental right by executive or administrative action, certain recommendations are to be made or such matters are to be referred to a Court. Sections 15 (6), 15 (7), and 15 (8) of the said Act provide as follows:

   "(6) A copy of a recommendation made by the Commission under the preceding provisions of this section in respect of the infringement or imminent infringement of a fundamental right shall be sent by the Commission to the person aggrieved, the head of the institution concerned, and the Minister to whom the institution concerned has been assigned.

   (7) The Commission shall require any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed to report to the Commission, within such period as may be specified in such recommendation, the action which such authority or person has taken, or proposes to take, to give effect to such recommendation, and it shall be the duty of every such person to report to the Commission accordingly.

   (8) Where any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed fails to report to the Commission within the period

> *specified in such recommendation, or where such person reports to the Commission and the action taken, or proposed to be taken by him to give effect to the recommendations of the Commission, is, in the view of the Commission, inadequate, the Commission shall make."*

The sum total of the said provisions is that such recommendations be communicated to the person aggrieved, the head of the institution concerned, and the relevant Minister. Such persons to whom the recommendations are so sent are required to report back to the Commission, informing them of the action taken or proposed to be taken to give effect to such recommendation. If there is a failure to so report or the action taken or proposed to be taken to give effect to the recommendations is, in the view of the Commission, inadequate, the Commissioner is required to make a full report of the fact to the President, who is then required to cause a copy of the said report to be placed before Parliament.

9. That being so, the HRCSL is thus empowered only to make a recommendation and no more. Strangely, the aforementioned provisions do not require that such recommendations be communicated to the individual respondent party to the complaint but to the institution. According to P-11, the respondent party to the said HRCSL application is the Governor of the Central Bank. If at all, of the respondents, it is only the 1A respondent, the Central Bank, that may have been informed of the recommendation, i.e., it is only a recommendation. That being so, what is significant is that there is no corresponding statutory duty cast upon any respondent party named in the application to the HRCSL, or upon any of the other respondents, to give effect to or implement such recommendations. The Central Bank of Sri Lanka is not a natural person. It is now settled law that mere recommendations cannot be enforced by way of *mandamus.* It was so held by Sriskandarajah, J., in ***Mahanayake vs. Chairman Ceylon Petroleum Corporation and others*** (2005) 2 Sri L. R. 193, in an identical issue where the petitioners

sought similar writs of *mandamus* against the party respondents, and in the alternative, against the HRCSL to enforce a recommendation. His Lordship, considering this issue, held as follows:

> *"The Petitioner had decided to seek the intervention of the Human Rights Commission in this matter, and the Human Rights Commission after an inquiry recommended that the Petitioner should be re-instated. The 02nd Respondent Corporation did not act upon this recommendation and the chairman of the 02nd Respondent by his letter dated 21.05.2001 (2R14) informed the Human Rights Commission as to why he was not implementing the recommendation. The Petitioner by this application seeking a writ of mandamus to compel the 01st and 02nd Respondents to reinstate the Petitioner as directed by the 03rd Respondent or in the alternative to compel the 03rd respondent to refer this matter to Her Excellency the President to compel the 01st and 02nd Respondents to reinstate the Petitioner. A writ of mandamus can only issue against a natural person who holds a public office. In* ***Haniffa v. Chairman, Urban Council, Nawalapitiya*** *(66 NLR 048) the Court held, that in an application for a writ of mandamus against the Chairman of an Urban Council the Petitioner must name the individual person against whom the writ can be issued. Therefore The Petitioner in this application cannot seek a writ of mandamus against the 03rd Respondent the Human Rights Commission as it is not a natural person and the Petitioner has failed to name the members of the commission to seek this remedy. Further a writ of mandamus may issue to compel something to be done under a statue it must be shown the statute impose a legal duty. In* ***Mageswaran v. University Grants Commission*** *(2003) 2 Sri LR 282, the court held,*
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> > *"A writ of mandamus only commands the person or body to whom it is directed to perform a public duty imposed by law. In other words, a writ of mandamus would lie where a statute mandates certain action in defined circumstances and despite the existence of such circumstances, the required action has not been performed."*
>
> *The Human Rights Commission is a body, which can only make a recommendation. This recommendation neither creates a legal right for the petitioner to claim reinstatement in the 2nd Respondents Corporation nor does it create a legal duty for the*

> *Respondent Corporation to reinstate the petitioner. For the reasons stated above the Court dismiss this application without costs."*

Accordingly, I also subscribe to the view that no *mandamus* will issue to enforce a mere recommendation, in the absence of a legal duty and a corresponding legal right.

10. At this juncture, it is relevant that enforcement of HRCSL recommendations is especially provided for in Section 15 (8) of the HRCSL Act. The obligation is placed on the HRCSL to take necessary steps to do so. If at all, a *mandamus* may lie against the Chairman and the members of the Commission to compel them to take steps to enforce the recommendation, which relief is not sought in this application.

11. As for prayers *(c)* and *(d)*, *mandamus* is sought against the 1st – 6th respondents, to recalculate the applicable salary as prescribed by Scheme "D" of Circular dated 18.10.1996. As submitted by the learned Counsel for the petitioner, this relief stands alone and is independent of the relief prayed for by prayer *(b)*. The petitioners have, on their own volition and choice, opted for Scheme "D" of the said Circular. They have all, for almost 26 years, reaped the benefits of the said Scheme, and the 1st, 8th, 9th, 10th, and 15th respondents also have obtained certain revisions and adjustments to their benefit subsequently. 26 years is, by any standard, an extremely long period, which certainly amounts to a serious delay. The petitioners have pursued the remedy with the HRCSL, and what they have primarily sought is either to switch to Scheme "C" or to obtain the benefits under Scheme "C". The relief under prayers *(c)* and *(d)* are not pegged to the same. Under these circumstances, the petitioners, having obtained benefits since 1996, cannot now be heard to complain that such a scheme should include other benefits. This is so, as it is, in effect, an attempt to assail and vary a decision and a circular which was made in 1996.

12. Accordingly, the petitioners are certainly guilty of laches or delay. In ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR 368, Sharvananda, J. (as he then was), observed that:

> *"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."*

Similarly, in ***Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and another*** [1996] 2 SLR 70) it was held as follows:

> *"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."*

In the absence of any plausible explanation, it appears that the petitioners are guilty of laches, which warrants the dismissal of this application.

13. The petitioners, having opted for and accepted Scheme "D", are now seeking to obtain the benefits of Scheme "C", being the periodic increase of pay and allowances up to the age of retirement. Scheme "C" is premised and based on the hypothesis that such employee continues in service until reaching the age of retirement, and at that point, will be deemed to be retired and is then granted the retirement benefit based on the Rules of the Central Bank Pension Fund. As opposed to this, Scheme "D" is premised and based on the supposition that such employees will retire immediately upon accepting a lump sum payment of 5 years' full pay and allowance. That being so, such employees'

pension payments will commence immediately and should necessarily be calculated on the salary and allowances as at that point. Thus, the operative and the critical distinction between Scheme “C” and “D” is the point at which such employee’s retirement becomes operative. Under Scheme “C” it is on reaching 55 years, and under Scheme “D” it is immediately upon accepting or so opting for such scheme. That being so, the employees who were injured due to the bomb blast were offered two schemes, and they were free to opt for a scheme of their choice. Each of the schemes was formulated on different premises and formulas. The benefits are unique to each scheme. Upon making a choice and enjoying the benefits of the scheme of your choice, it is not reasonable or just or equitable for such employees to, at a later point in time, seek the benefit of the other scheme completely out of context of the scheme. As I observe, the HRCSL has totally failed to appreciate this fundamental and basic principle and has erroneously determined that there was a violation of Article 12. I see no breach of any concomitant of Article 12, be it equality before the law or equal protection of the law.

14. In the above premises, the petitioners have failed to make out any lawful basis to satisfy that they are entitled to the relief sought. Accordingly, I see no basis in law or otherwise to issue notice as prayed for. The issuing of notice is accordingly refused and the application of the petitioners is rejected and dismissed. However I make no order as to costs.

15. Application is dismissed.

JUDGE OF THE COURT OF APPEAL