

**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.

Delpechitra Acharige Premasiri,
No. 9/5, Second Lane,
Saman Mawatha,
Galavilla Waththa, Homagama.

PETITIONER

C.A. Case No. WRT/0429/24

Vs.

1. Lieutenant General Vikum Liyanage,
Commander of the Army,
Sri Lanka Army Headquarters,
Defense Headquarters Complex,
Sri Jayawardenapura Kotte.
2. Unit Commander,
Ordinance Corps,
Panagoda,
Homagama.
3. Kamal Gunarathne,
Secretary,
Ministry of Defense,
Defense Headquarters Complex,
Sri Jayawardenapura Kotte.
4. Brigadier H.T.W. Vidyananda,

Director Personal and Administration,
Defense Headquarters Complex,
Sri Jayawardenapura Kotte.

5. Colonel N.A.S.C. Perera,
Sri Lanka Army Directorate of Pay and
Record,
Army Cantonment,
Panagoda, Homagama.

6. Jagath Dias,
Director General of Pensions,
Department of Pensions,
Maligawatte Secretariat, Maligawatte,
Colombo 10.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

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

COUNSEL : Ershan Ariyaratnam with Udeni Gallage for the Petitioner.
Tashya Gajanayake, SC for the Respondents.

SUPPORTED ON : 11.06.2025

DECIDED ON : 27.06.2025

ORDER

K.M.G.H. KULATUNGA, J

1. The petitioner had preferred this application *inter alia* seeking a Writ of Mandamus directing the 1st respondent to pay the pension of the petitioner. The petitioner had joined the Sri Lanka Army as a Technical Clerk of the Ordinance Corps in February 1971. However, in about

1980 the petitioner moved to be discharged from the Army by *purchasing his service from the Army*. This is a process by which a soldier could have himself released and leave the Army upon a payment of a certain sum. It was submitted that the petitioner did obtain his release with effect from 15.11.1980. This was communicated by letter dated 23.07.1987 (X-3). It was the submission that due to an administrative delay in obtaining the said release, he was also treated as a deserter. However, that was rectified by X-3.

2. That being so, the petitioner had at some point thereafter, made a request by letter dated 18.07.1994 (X-4) seeking relief on the basis of political victimization. This request had been forwarded to the Cabinet, and a Committee appointed by the Cabinet had recommended that the petitioner be re-enlisted without arrears of pay, increments, or any other allowances (X-5). As evident from X-7, this had been then communicated to the relevant unit of the Sri Lanka Army. The petitioner alleges that there was no communication until the lapse of some time and he was informed of this decision somewhere in September 1999. He had then by letter dated 27.09.1999 (X-9) informed that he would consider the said re-enlistment if he would be entitled to a pension. Then, once again by letter dated 05.05.2000 (X-10) he had written to the President seeking that the Committee decision to be reconsidered to enable him to obtain a pension. Upon further communication between the petitioner and the Sri Lanka Army, the petitioner had been informed by letter dated 11.04.2016 (X-16) that there is no basis to consider his request for a pension.
3. Long thereafter on 05.07.2024 the petitioner had preferred this application seeking a Writ of Mandamus directing the 1st respondent to pay him a pension.
4. The learned State Counsel for the respondent primarily raised the objections of undue delay and laches. The petitioner certainly had been informed of the recommendation to reinstate without arrears of pay increments or any other allowances at least by September 1999. His

position has been that he would report and serve provided he is entitled to a pension. The recommendation of the Committee clearly does not grant him a right to a pension. In any event, the petitioner would be entitled to whatever benefit only if he had first accepted and resumed his services. He had failed and not done so. Therefore, the question of considering his entitlement to a pension by the 1st respondent does not arise in the first instance. It is common ground that a minimum period of 22 years of service is required to qualify for a pension.

5. The petitioner notwithstanding being informed at some point of time prior to September 1999, has failed to challenge the said recommendation or accept the reinstatement, which would be the basis for him to qualify to make a claim for a pension. It is also relevant that the release of the petitioner from the Sri Lanka Army with effect from 1980, had been made on his own request. Subsequently he had made out a case based on political victimization for reinstatement but not pension. Then, the petitioner decides to wait for almost 29 years, and has now has sought to enforce a claim for a pension invoking the writ jurisdiction of this Court.
6. According to the learned Counsel for the petitioner, his alleged grievance is that two persons, himself and Lance Corporal Deeson Silva, were recommended relief by the aforesaid political victimization Committee. However, the other has been afforded the opportunity of receiving a pension, whereas the petitioner has not. According to the recommendation contained in X-5, the relief recommended for the petitioner is re-enlistment without an arrears of pay increment or other allowances. As opposed to that, Lance Corporal Deeson Silva had been recommended to be promoted to the next rank and be retired from service with a pension as if he had served 22 years. This recommendation is what was given effect to by the Sri Lanka Army. Clearly, the petitioner is afforded only re-enlistment. That being so the petitioner cannot now seek a Mandamus to compel the Sri Lanka Army to award a pension which is not directly recommended. As stated above,

the petitioner appears to have insisted on an undertaking or a guarantee of a pension entitlement as a pre-condition to his accepting reinstatement as recommended. This is confirmed by the petitioner's letter dated 27.07.2004 (X-18) in which he had stated as follows; *"I was summoned to the Unit Headquarters of the Sri Lanka Army Ordinance Corps. I notified the Unit Commander of my consent to serve further. In the Army if my lost period of service is counted for pension purposes."*

7. Now the petitioner, after the lapse of 29 years seeking *inter alia* a Writ of Mandamus directing the 2nd respondent to pay a pension. By any standard the petitioner is guilty of laches.
8. It is settled law that a claimant is required to act with utmost promptitude. Unexplained delay will be basis to reject an application for Writ. As to whether the delay is undue and the explanation offered is acceptable, is a matter for each Court to decide (*vide* **Dissanayake vs. Fernando** 75 (NLR) 356, **Bisomanika vs. Cyril De Alwis** 1 (SLR) 368). In **Biso Menika vs. Cyril de Alwis** [1982] 1 SLR 368, 380 Sharvananda J., opined that;

"If the delay can be reasonably explained, the court will not decline to interfere. The delay which a court can excuse is one which is caused by the application pursuing a legal remedy and not a remedy which is extra -legal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by law."

9. As narrated above, the petitioner had requested for his release from the Army and then had obtained the release. He had not served the minimum period of 22 years to qualify for a pension. Having left the Army on his own volition has subsequently made a complaint on the basis of political victimization and had been granted relief in or around 1997. That too for reinstatement without back wages. Long before filing this application at least on 04.08.2007, the Sri Lanka Army has informed him that in view of the existing Army Pensions and Gratuities Code of 1981, the petitioner cannot be reinstated. A minimum period of 22 years' service is required to qualify for a pension, in accordance with

Regulation 21 of the Army Pensions and Gratuities Code. Regulation 21 is as follows:

PART II—SOLDIERS

Pensions

21.

- 1) *A soldier shall retire at the age of 55 years. A pension calculated in the manner provided in paragraph (2) of this regulation may be paid upon retirement to—*
 - a. *a soldier transferred to the Regular Reserve or discharged otherwise than for misconduct or for inefficiency due to causes within his control, if he has at least twenty-two years' reckonable service.*
 - b. *a soldier who has been re-engaged and who is discharged on or after the termination of his re-engagement, if he has at least twenty-two years' reckonable service.*

- 2) *Subject as hereinafter provided, pension payable upon retirement to a soldier shall be calculated with effect from September 1, 1981 in accordance with the following formula:-*

$$\frac{(\text{Number of completed months of reckonable service} + 90 + \text{half the difference between the age of retirement and 55 years}) \times \text{Pay at Retirement}}{660}$$

Provided, however, that in no case shall the pension payable to such soldier exceed two thirds of the pay drawn by him at retirement in the substantive or temporary rank then held by him.

- 3) *Notwithstanding anything to the contrary in paragraph (1) where a soldier has been enlisted in the Regular Force when he was over 33 years old, and such soldier retires in the circumstances specified in paragraph (1) or in consequence of a decision that further employment is not available for him, he may if he has completed fifteen years' reckonable service and rendered satisfactory service, be granted a pension in accordance with paragraph (2).*

10. In the absence of the minimum period of 22 years' service as contemplated above, the 1st or the 2nd respondents will have no statutory authority or a duty to award a pension. Correspondingly the petitioner does not have and has not accrued to himself the right to receive a pension under Army Pensions and Gratuities Code of 1981. To that extent, there is an absence of a legal duty on the part of the respondents as well as the absence of a legal right as far as the petitioner is concerned. Justice Buwaneka Aluwihare in the case of **Rajeswari Nadaraja vs. Minister of Industry and Commerce and Co-operatives**

Development and others (SC Appeal No. 177/2015, decided on 31.08.2018), expressed the following view in this regard:

“In an application for a writ of mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists.”

To that extent, in the absence of a legal duty or a corresponding legal right, the petitioner lacks standing to seek a Writ of Mandamus as prayed for.

11. It is relevant to note that the petitioner, if at all, may have been entitled to a pension if the aforesaid Committee on political victimization did make a positive recommendation as to his entitlement to a pension. Unfortunately, the said Committee had made no such recommendation. To cap it all, the petitioner has not accepted the re-instatement as recommended and offered to him either. That being so, the legal position of the petitioner will remain as being a soldier discharged or released from the Sri Lanka Army with effect from 15.11.1980. Therefore, the petitioner does not have any legal right to a pension under the said Army Pensions and Gratuities Code of 1981.

12. In the above premises, there is no basis in law or otherwise, to entertain this application or issue notice on the respondents as prayed for. Accordingly, this application is dismissed. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL