

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 *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0756/2024

Rev. Bro. Sinnappu Selvathas,
De Lasalle House,
Thalaimannar Road,
Mannar.

PETITIONER

Vs.

1. Mr. A. Jagath D. Dias,
The Director General of Pensions,
Department of Pensions,
Maligawatte,
Colombo 10.

1A. Mr. Chaminda Hettiarachchi,
The Director General of Pensions,
Department of Pensions,
Maligawatte,
Colombo 10.

2. Mr. M. Patrick Diranjan,
Secretary,
Ministry of Education, Cultural Affairs,
Sports and Youth Affairs,
Northern Province,
Chemmany Road,
Nallur, Jaffna.

3. Mr. G. D. Thevara,
Zonal Director of Education,
Zonal Education Office,
Mannar.

- 3A. Mr. K. Selvan,
Zonal Director of Education,
Zonal Education Office,
Mannar.

4. Mr. S. Thiruvakaran,
Secretary,
Provincial Public Service Commission,
Northern Province,
393/48, Temple Road, Jaffna.

5. Mr. Pradeep Yasarathna,
Secretary,
Ministry of Public Administration, Home
Affairs, Provincial Councils and Local
Government,
Independent Square,
Colombo 07.

5A. Mr. S. Alokabandara,
Secretary,
Ministry of Public Administration, Home
Affairs, Provincial Councils and Local
Government,
Independent Square,
Colombo 07.

6. Mr. W.H.M.M.C.K. Dayaratne,
Secretary,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

7. Mr. Sanath Ediriweera,
Chairman.

8. Mr. N.H.M. Chithrananda,
Member.

8A. Dr. (Eng.) Sanath Panawennage,
Member.

9. Mr. G. S. A. De Silva PC,
Member.

10. Dr. A. D. N. De Zoysa,
Member.

11. Mrs. S. M. Mohamed,
Member.

12. Mrs. Ranajani Nadarajapillai,
Member.

13. Mr. M. B. R. Pushpakumara,
Member.

14. Prof. N. Selvakkumara,
Member.

All of the Public Service Commission.
1200/9, Rajamalwatta Road,
Battaramulla.

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

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Geoffrey Alagaratnam, P.C. with Sriranganathan Ragul and S. Vishakan
instructed by S. A. Kifsiya Banu for the Petitioner.
Dr. Peshan Gunaratne, S.C. for the Respondents.

Argued on : 25.11.2025

Written Submission

Tendered on : 16.01.2026 by the Petitioner
10.02.2026 by the Respondents

Decided on : 23.02.2026

Adithya Patabendige, J.

The Petitioner was appointed as a Trainee Teacher by the Secretary of the Education Committee of the Public Service Commission, by letter dated 15th March 1990, marked **P2** (English translation marked **P2T**).

He proceeded to Pakistan in 1991 without obtaining prior leave or informing the authorities, and returned to Sri Lanka in 2001. During this ten-year period, he worked in the education sector in Pakistan, and documents marked **P4A - P4D** were produced in support thereof. Upon his return to Sri Lanka, he requested reinstatement by letter marked **P5** (English translation marked **P5T**).

By letter dated 23rd August 2001, the Secretary, Ministry of Education, Cultural Affairs, and Sports, North -East Province, reinstated the Petitioner and assigned him to the Mn/St. Xavier's Boys' College in terms of the following conditions.

- The period of his absence from service be considered as no pay leave.
- He is not entitled to increment during the period of absence.
- It shall not absent himself from duty without prior approval.

Accordingly, the Petitioner again assumed duties at the said school on 10th September 2001, as per the document marked **P7**(English translation marked **P7T**).

Thereafter, he served in various schools until he reached the compulsory retirement age of 60 on 1st April 2018. During this period, he was made permanent in the service, and granted promotions as is evident from documents marked **P8, P9, P10, and P11** (corresponding English translations marked as **P8T, P9T, P10T, and P11T**, respectively).

The Petitioner was granted permission to retire from service with effect from 1st April 2018, by letter dated 26th March 2018 issued under the hands of the Secretary, Ministry of Education, Cultural Affairs, and Sports and Youth Affairs, Northern Province, the 2nd Respondent, marked **P12** (English translation marked **P12T**).

The Zonal Director of Education, the 3rd Respondent, forwarded the necessary documents to the Director of Pensions, the 1st Respondent, by letter dated 22nd November 2019, marked **P14**, to enable the grant of pension benefits to the Petitioner. An online printout of Form PD55 was also forwarded to the 1st Respondent by the 3rd Respondent on 04th December 2019, marked **P15**. The 1st Respondent returned the Pension papers for corrections on 19th

February 2020, and the corrected documents were forwarded to the 1st Respondent on 12th August 2020 as per the document marked **P17** with the English translation marked **P17T**.

The 1st Respondent, as per the document marked **P18**, rejected the aforesaid pension papers. The **P18** states thus;

“The permanent pensionable appointment of this officer has been issued based on an interview conducted from 30.05.1992 to 11.07.1992. However, this officer vacated of post from 18.07.1991 – 04.09.2001. it is problematic to grant permanent appointment during that period. Provide information the basis on which such application were made.”

Consequent to the exchange of communication between the 2nd and 3rd Respondents, the 3rd Respondent informed the 1st Respondent, marked **P21** (English translation **P21T**), that the manner in which the service of the Petitioner was made permanent.

Thereafter, the 1st Respondent rejected the Petitioner's pension benefits for the reasons set out in the document marked **P23**. It states as follows;

“1. Please wait till the rejected application is received by post and then do following corrections and resend to Department of Pensions.

2. It is observed that the above-named officer’s reinstatement has violated sections 37.1, 37.2, 37.3 of chapter XLVIII of the Establishment Code. Therefore, it is hereby requested to provide valid provisions to justify reinstatement decision.

3. Hence, the department of pensions is unable to proceed with the pension application and returned herewith the pension file”

However, after several communications between the 2nd and 3rd Respondents, as well as the Petitioner and the 2nd and 3rd Respondents, the 1st Respondent, in his letter dated 19th February 2024, marked **P33**, informed the 3rd Respondent that the Petitioner is not entitled to the pension rights according to the Section 37 of the Establishment Code, and it states thus;

- ***According to XLVIII chapter 37.1 of the Code of Establishment, if an officer who has received a vacation of post notice, the appeal should be submitted to the head of the department within 3 months of the issuance of the notice. The head of the institute can take action as per XLVIII chapter 37.2.***
- ***According to XLVIII chapter 37.3 of the Code of Establishment, in a case where the disciplinary authority has refused the relevant officer to be reinstated, an appeal***

can be submitted against the decision to the Council of Ministers or the Public Service Commission, as applicable, within 6 months from the date of the decision.

- *Therefore, the officer is not entitled for pension right. The file numbered from page No.1-74 is returned herewith.*

Being aggrieved by the decisions of the 1st Respondent, the Petitioner lodged a complaint with the Sri Lanka Human Rights Commission on 07th March 2024, marked **P34**.

The Petitioner, in this application seeks, *inter alia*, a mandate in the nature of a *writ of certiorari* quashing the decisions embodied in the documents marked **P18**, **P23**, and **P33**.

The Petitioner further seeks a *writ of mandamus* compelling the 1st Respondent and all or any Respondents to process the pension of the Petitioner and /or his pension rights according to the applicable law.

The 1st Respondent raised the following preliminary objections in his statement of objections dated 8th September 2025.

- The Petitioner is guilty of laches.
- The application is misconceived and/or untenable in law.
- The Petitioner failed to demonstrate the requirements to invoke the writ jurisdiction of the Court.
- The application is futile.
- The application was filed without any basis.
- The application is contrary to Article 61A of the Constitution.

Although the learned State Counsel, on behalf of all the Respondents, moved to file a statement of objections on 2nd April 2025, it is to be noted that the statement of objections dated 8th September 2025 has been filed only for the 1st Respondent. However, the written submission was filed on behalf of all the Respondents.

When this application was taken up for arguments, learned Presidents' Counsel argued that since the Petitioner has not received any notice of vacation of post in terms of Section 37 of the Establishment Code, the decisions embodied in the aforementioned three documents are against the principles of natural justice, *ultra vires*, illogical, irrational, irrelevant, arbitrary and against the legitimate expectations of the Petitioner.

The principal contention of the learned State Counsel was that the Petitioner traveled to Pakistan in 1991 without permission and without informing the authorities. Therefore, he had vacated his post and is not entitled to pension rights. Further in his written submissions, the 1st Respondent highlighted that his duty is merely ministerial, and it is the duty of the Petitioner to submit all necessary documents to process his application.

According to the documents marked **P23** and **P33**, the 1st Respondent rejected the Petitioner's pension rights on the basis of Section 37 of the Establishment Code, stating that a public officer who receives a vacation of post notice must follow the procedural steps stipulated in that Section. Otherwise, the officer is not entitled to the pension rights.

Paragraph 37 of the Petition dated 25th November 2024 specifically avers that the Petitioner has never received any notice of vacation of post.

In response thereto, the 1st Respondent, in paragraph 6 of his statement of objections, states that he is unaware of that fact and accordingly denies the said averment.

If that be the position of the 1st Respondent, a pertinent question arises as to the basis upon which the 1st Respondent came to the conclusion stipulated in documents marked **P23** and **P33**, that the Petitioner had vacated his post or that the reinstatement was contrary to Section 37 of the Establishment Code.

Be that as it may, it is necessary to examine the legal framework embodied in Section 37 of the Establishment Code.

Section 37 of the Establishment Code states as follows;

37. Vacation of Post

37:1

Where an officer who has been served with a Notice of Vacation of Post under the provisions of Chapter V of Part I of the Establishments Code intends to tender an appeal against such Notice, such appeal should be tendered to the appropriate authority before the expiry of three months from the date on which the Notice of Vacation of Post was served on him.

37:2

If the Disciplinary Authority considers, in view of the matters represented in the appeal submitted to him in terms of sub-section 37:1 above, that the officer has not reported for duty

because of acceptable reasons, he may order the reinstatement of the officer after imposing punishment for not reporting for duty without permission.

37:3

Where the Disciplinary Authority has rejected the reinstatement of the officer, he may appeal against such a decision to the Cabinet of Ministers or the Public Service Commission, as the case may be, within six months from the date of such a decision.

The central issue that arises for determination in this application is whether the 1st Respondent possesses the power to disregard a lawful order of reinstatement made by the competent disciplinary authority and to treat the Petitioner as having vacated his post disregarding such reinstatement.

Section 37 provides for a structured procedure for the vacation of a post. A notice of Vacation of Post must be served, and the officer is entitled to appeal. Importantly, subsection 37:2 expressly empowers the disciplinary authority, upon consideration of the appeal, to order reinstatement even after such notice. Thus, the vacation of the post is not an automatic or self-executing consequence of absence. It is a status that crystallizes only upon the taking of due administrative action. Where reinstatement is ordered, the earlier interruption in service stands cured.

In the case of *Abeywickrema v Pathirana and Others (1986) 1 SLR 120*, Chief Justice Sharvananda analyzed Chapter V of the Establishment Code and stated as follows;

“It is the State which alone has the right to treat a public officer, who absents himself without leave, as having vacated his post. A public officer cannot plead his own breach of duty as proprio vigore, terminating the employment. It is for the other party to the contract viz: the State, to treat that breach as a ground for terminating the employment, and until the State chooses to do so, the official continues in the eye of the law, in employment. The State, in this case, has not served any vacation of post notice.”

It is not in dispute that the Petitioner had absented himself from duty for a period of approximately ten years without obtaining prior approval. However, the material placed before this Court establishes that the appointing or disciplinary authority (2nd and 3rd Respondents) did not allow such absence to culminate in a final termination of service. On the contrary, the Petitioner was subsequently reinstated, and the entire period of absence was regularized as unpaid leave.

However, in the present case, once the disciplinary authority exercised its discretion to reinstate the Petitioner and to treat the period of absence as leave without pay, the legal consequence was the preservation of the service relationship.

The Director of Pensions is required to act upon the service record as certified by the appointing and disciplinary authorities. In the absence of any material demonstrating that the order of reinstatement was *ultra vires* or void, the Director of Pensions cannot independently re-characterize the status of the Petitioner as one of permanent vacation of post. To do so would amount to sitting in appeal over a concluded disciplinary determination, which is beyond the scope of his statutory mandate.

When the Petitioner's pension papers were submitted, the application was initially rejected by communication marked **P18**. The rejection proceeded on the footing that the Petitioner's permanent pensionable appointment was issued pursuant to an interview conducted between 30th May 1992 and 11th July 1992, he had vacated the post from 18th July 1991 to 4th September 2001. On that basis, the 1st Respondent has expressed the view that it is problematic to grant a permanent appointment during that period and has called upon the appointing authority to clarify the legal basis upon which such an appointment was made.

Upon clarification by the appointing authority that there was no examination or interview, and the permanent appointment of the Petitioner was made on completion of four years of service (**P20 to P22**), the 1st Respondent proceeded to reject the application on a different footing, namely by invoking Section 37 of the Establishment Code as discussed earlier in this Judgment. This shifting of grounds reflects a failure to properly appreciate the legal effect of the reinstatement order and the certified service record.

The power exercised by the 1st Respondent is described by the learned State Counsel as ministerial in nature. If the function of the 1st Respondent is ministerial in nature, he is bound to act upon the service particulars as formally determined by the appointing authority. However, the conduct of the 1st Respondent in the present matter reveals a position inconsistent with that submission. While asserting that the role is ministerial, the 1st Respondent has undertaken to reassess the service of the Petitioner and to treat the period in question as constituting a vacation of post, notwithstanding the reinstatement ordered by the appointing authority. Such an approach is not ministerial. It is adjudicatory in nature and amounts to a misdirection in law and a failure to confine the decision-making process within the limits of the 1st Respondent's statutory functions.

Administrative decision-making must be coherent, consistent, and grounded in the record. The adoption of inconsistent reasons, without addressing the legal consequences of absence, demonstrates non-application of mind to the material facts.

Therefore, it is abundantly clear that the impugned decision is vitiated by illegality and jurisdictional error. By disregarding the reinstatement order made under Section 37 and treating the Petitioner as having continued to vacate his post, the 1st Respondent acted beyond the scope of his statutory authority, and therefore, it amounts to a jurisdictional error rendering the decision *ultra vires* and legally unsustainable.

Such a contradictory reasoning not only undermines the credibility of the system of public administration of the country but also subjects the affected officer to avoidable hardship. Pension is not an *ex-gratia* payment but a statutory entitlement flowing from qualifying service duly recognized by law.

The decision to reinstate and to regularize the period of absence as unpaid or no-pay leave is solely within the domain of the appointing authority and not the duty of the 1st Respondent, Director of Pensions.

The learned State Counsel further contended that the Petitioner filed this application belatedly and hence he is guilty of laches. As per the document marked **P18**, the 1st Respondent initially rejected the pension application on 18th February 2020. However, the learned State Counsel overlooked the fact that **P18** itself directed the resubmission of the application with the necessary documents. Thereafter, the necessary documents were resubmitted, and the 1st Respondent rejected the application for the second time on 29th December 2021, by the document marked **P23**, and finally it was rejected on 19th February 2024 by the letter marked **P33**. The instant application was filed on 25th November 2024. Considering the circumstances of this case, it cannot be considered an inordinate delay.

On the other hand, even if there had been some delay, it would not be fatal to this application, as this court has observed that the decisions reflected in **P18**, **P23**, and **P33** are manifestly erroneous.

In the case of *Biso Menka v Cyril de Alwis (1982) 1 S L R 368 at page 369 Justice Sharvananda* held thus:

“When the Court has examined the record and is satisfied the Order complained of manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief

of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify the rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically.”

For the reasons set out above, this Court is satisfied that the impugned decisions of the 1st Respondent – the Director of Pensions cannot be sustained in law.

Accordingly, the Court is inclined to issue a *Writ of Certiorari* quashing the decisions embodied in documents marked **P18**, **P23**, and **P33**.

The Court further issues a mandate in the nature of a *Writ of Mandamus* directing the 1st Respondent to process the pension application strictly on the basis of the service record of the Petitioner, excluding only the period lawfully treated as unpaid leave, and grant his pension entitlements immediately.

I make no order as to the costs of this application.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL