

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

LANKA

In the matter of an application for mandate in the nature of Writs of Mandamus under and in terms of Article 140 of the Constitution.

**CA (Writ) Application No:
315/2023**

Hengoda Withanachchi Sugathadasa,

No. 292/2,

Meegahakumbura,

Bulathsinhala.

Petitioner

Vs.

1. Mr. S. Alokabandara,

The Secretary,

Ministry of Public Administration,

Home Affairs, Provincial Councils and Local

Government,

Independence Square,

Colombo – 07.

2. Mr. A. Jagath D. Dias,

The Director General of Pensions,

Department of Pensions,

Maligawatta,
Colombo – 10.

3. Mr. K.G.R. Jayanath,
The Director,
Widowers' and Orphans' Pension Office,
Department of Pensions,
Maligawatte,
Colombo – 10.

4. Mr. G. Pradeep Saputhanthri,
The Commissioner General,
Department for Registration of Persons,
10th Floor,
“Suhurupaya”
Sri Subhuthipura Road,
Battaramulla.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Heshani Chandrasinghe, AAL for the Petitioner.

Rifana Mukthar, S.C. for the Respondents.

Written Submissions on : 03.03.2026 for the Petitioner.

Decided on : 30.04.2026

K. Priyantha Fernando, J.(CA)

1. The Petitioner filed this application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka seeking a Writ of *Mandamus* directing the Respondents to grant and pay the Widowers and Orphans pension attributable to his deceased wife's service, and that the respondents have delayed, neglected and failed to provide equitable relief despite repeated requests.

THE POSITION OF THE PETITIONER:

2. The Petitioner filed this case as the husband of Mrs. U. L. Chandima who served in government service as a Managing Assistant in the Divisional Secretariat, Bulathsinhala from 1980 till her date of retirement on 01.10.2008 after completing a service of thirty years. The Petitioner submitted that Mrs. U. L. Chandima later passed away on 31.10.2013.

3. The Petitioner submitted that he is entitled to the Widowers and Orphans pension in respect of the thirty years' service carried out by his wife, and that the Respondents' refusal to provide him with such is on an assertion that the deceased officer did not give consent to join the Widowers and Orphans scheme.
4. The Petitioner submitted that Pensions Circular No. 03/2014 and Extraordinary Gazette No. 1844/71 (10.01.2014) extended the period for female officers who were in public service before 01.08.1983 and who had been unable to express a preference to 31.12.2014. Moreover, the Petitioner contended that the Circular and Gazette expressly provided that where an officer has passed away the widowed husband or orphan child may apply and sign the PDA application for the Widowers and Orphans pension.
5. The Petitioner submitted that he then received a letter dated 09.04.2014 from the Director of Projects and Development Policies of the Department of Pensions indicating that he could obtain a registration number for the Widowers and Orphans Pensions Scheme, and that the Divisional Secretary of Bulathsinhala forwarded the requested documents to the Department of Pensions on 12.05.2014. The Petitioner stated that he then acted upon the legitimate expectation created by the Department of Pensions' communications and the circular/gazette, but the subsequent refusal and inaction of the Respondent infringed upon his legitimate expectation. As such, the Petitioner further contended that the conduct of the Respondent amounted to unequal treatment contrary to Article 12(1) of the Constitution.

6. The Petitioner submitted and relied on the authorities of Ariyaratne et al v Illangakoon et al SC/FR/444/2012 dated 30.07.2019, G. M. Nimalsiri v Colonel P.P.J. Fernando et al SC/FR/256/2010 dated 17.09.2015 in order to establish that the Petitioner accrued a legitimate expectation by the representation made to him by the Director of Pensions. The Petitioner submitted that in the judgment of Dayarathna and Others v Minister of Health and Indigenous Medicine (1999) 1 SLR 393 it was held as follows,

"It is the duty of this Court to safeguard the rights and privileges, as well as interests deserving of protection such as those based on legitimate expectations of individuals." (supra at p 413)

7. The Petitioner submitted that the Department of Pensions had applied the rules inconsistently. In order to do so, the Petitioner submitted and argued that the instance of Mr. W. Gnathilake, husband of Mrs. M.A. Indrani was contemporaneous to the instant matter. The situation concerned an incident wherein which the spouse received the Widowers and Orphans pension despite an absence of the deceased officer's consent, and that the Department's own correspondence (Assistant Director of Pensions (Policies and Law) letter dated 22.01.2018) confirmed the existence of this discrepancy. The Petitioner submitted that this inconsistent treatment demonstrates arbitrariness and a breach of natural justice and equality.
8. Furthermore, the Petitioner submitted that he petitioned the Public Petitions Committee of Parliament, which issued a favourable report dated 16.12.2016 stating that Department officials could not justify refusal and that the Petitioner was entitled to the Widowers and Orphans pension. The letter directed the Department of Pensions to act in that manner. The Petitioner submitted that despite that direction, to date the Department failed to implement

the recommendation or to respond to parliamentary follow-up inquiries.

9. It was further stated by the Petitioner that the Parliamentary Commissioner for Administrative Affairs (Ombudsman) wrote on 26.06.2018 expressing that differential treatment on the same issue is unfair and unjustifiable and that the Petitioner should be granted the pension. Relying on this assurance, the Petitioner considered the letter sent by the Ombudsman as further administrative recognition of his entitlement to the Pension and of the Department's inconsistent approach.
10. The Petitioner submitted that the Department of Pensions was negligent, misled him by inconsistent communications, and "turned a blind eye" to the matter over the course of many years, causing grave injustice to him. The Petitioner submitted that he has suffered material prejudice and hardship: he is elderly (almost 79), is suffering from throat cancer and arthritis, faces mobility issues and substantial medical expenses, and has been deprived of pension benefits to which he claims he is legally entitled.
11. The Petitioner submitted that, in light of the facts, the circular and gazette provisions, the Department's own communications, the parliamentary committee report and the Ombudsman's letter, he is entitled to a writ of mandamus directing the Respondents to issue and pay the Widowers and Orphans pension in respect of his deceased wife's service from 1980 to 2013. The Petitioner submitted that such relief is warranted to vindicate his rights under the principles of natural justice, legitimate expectation and equality as pleaded in the petition and supporting documents.

THE POSITION OF THE 1ST AND 2ND RESPONDENTS:

12. The Respondents categorically denied all averments in the Petition save those specifically admitted, and submitted that they had at all times acted lawfully, reasonably, and in good faith without any improper motive or collateral purpose. They contended that the Petitioner's application was misconceived, vexatious, and amounted to an abuse of process.
13. By way of preliminary objections, the Respondents argued that the Petition was liable to be dismissed in *limine* on account of *laches*, grave misrepresentations, suppression of material facts, and failure to come before Court with clean hands. They submitted that the Petitioner could not approbate and reprobate his position, that a similar matter had already been dismissed by the Court of Appeal in CA Writ 379/2015, and that the Petitioner was not entitled to a writ of mandamus as he was not entitled to the pension. They further contended that the application was futile and incapable of being maintained.
14. The Respondents submitted that the Petitioner's late wife joined the Government Service in 1980. They argued that the Widows and Orphans Pensions Act No. 24 of 1983, which came into operation on 1st August 1983, provided for pensions to widowers and orphans of female public officers. Circular 231 of 28.11.1983 was issued for female officers who had joined prior to the Act. Under this Circular, eligible officers had to exercise their option to join the scheme before 01.02.1984, and such option was irrevocable. The Respondents contended that the Petitioner's late wife had opted not to join the scheme by signing Annex A on 01.02.1984, thereby irrevocably expressing her choice.

15. The Respondents further argued that although Circular 291 of 21.05.1985 and subsequent Circulars (13/2001, Pension Circular 03/2014, Gazette 1844/71) afforded opportunities to change the option, the Petitioner's late wife never altered her decision. Thus, she was never a contributor to the scheme and made no contributions, thereby disentitling the Petitioner from claiming any pension under the Act.
16. The Respondents relied on the precedent of CA/WRT/379/2015 decided on 25.02.2019, wherein the material facts are mirrored in the instant case. The Respondents argued that the Court of Appeal delivered a judgment wherein the application was dismissed on the basis that the deceased public officer had expressed her unwillingness to join and contribute to the pension scheme in 1984 and thus a 'neutral position' could not be inferred. Moreover, seeing as the deceased had not contributed to the pension scheme and expressed her unwillingness to do so, no payment could be made to the widower who claimed the pension. The judgment reads as follows, *"If she remained silent as such, for the purposes of section 3(6)(a) referred to above, she could have been treated as an officer who died "without making an election". Therefore, in my view, the petitioner does not satisfy (b) above."*
17. The Respondents further referred to the Human Rights Commission complaint (HRC/2419/15) made by the Petitioner, which had been dismissed on the basis that no violation of rights had occurred, noting that the Petitioner had suppressed this fact from the Court. The Respondents allege that the Petitioner is guilty of forum shopping and intentionally annexing only favourable documents while omitting detrimental ones.
18. The Respondents further denied specific averments in the Petition, reiterating that the Petitioner's late wife had opted out of the scheme and that the Department of Pensions had

confirmed this by letter dated 26.06.2020. The Respondents submitted that the Petitioner had failed to establish any case warranting the grant of *mandamus*. Finally, the Respondents contended that the application was misconceived, baseless, out of time, frivolous, vexatious, and futile, and that what had been lawfully done could not be declared a nullity.

ANALYSIS:

IS THERE A LEGITIMATE EXPECTATION?

19. Furthermore, in relation to the Petitioner's claim of legitimate expectation, upon perusal of the letter dated 09.04.2014 sent by the Director of Projects and Development Policies of the Department of Pensions to the Petitioner, it is clear that the Director has merely indicated to the Petitioner that he could obtain a registration number for the Widowers and Orphans Pensions Scheme. There does not seem to be an *express promise given or him a specific, unambiguous and unqualified assurance that it will act in that manner, which is a requirement* of a representation which results in a legitimate expectation.

An excerpt of the said Letter marked P4 is reproduced below,

වැන්දඹු පුරුෂ හා අනන්දරු විශ්‍රාම වැටුප් ක්‍රමය වෙනුවෙන් වූ මනාප ප්‍රකාශකිරීමේ කාලසීමාව
දීර්ඝ කිරීම - විශ්‍රාම වැටුප් චක්‍රලේඛ අංක 3/2014

“1. අංක 1844/71 හා 2014-01-10 දිනැති ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජ වාදී ජනරජයේ අතිවිශේෂ ගැසට් පත්‍රය මගින් 1983-08-01 දිනට පෙර රාජ්‍ය සේවයේ පත්වීම් ලබා එදිනට සේවයේ නියුතුව සිටි රාජ්‍ය සේවයේ නිලධාරීන්ගෙන් වෙනුවෙන් වැන්දඹු පුරුෂ හා අනන්දරු විශ්‍රාම වැටුප්

ක්‍රමය සඳහා මනාපය ප්‍රකාශකිරීමේ කාලසීමාව 2014-12-31 දින දක්වා දීර්ඝ කරනු ලැබ ඇති බවකාරුණිකව දන්වා සිටිමි.

2. ඒ අනුව ඔබහට වැන්දඹු පුරුෂ හා අනන්දරු විශ්‍රාම වැටුප් ක්‍රමයේ ලියාපදිංචි අංකයක් ලබාගැනීම සඳහා අවස්ථාව ඇත. ඒ සඳහා විධිමත් පරිදි සකස් කරනු ලැබූ අයදුම්පත් කට්ටලයක් ඔබ/ හාර්යාව අවසන් වරට සේවය කර ඇති ආයතන ප්‍රධානියා මගින් 2014-12-31 දිනටපෙර මා වෙත ඉදිරිපත් කිරීමට කටයුතු කරන්න.

3. තවද මේහා අදාළ වැඩිමනත් තොරතුරු සඳහා 2014-03-26 දින දරණ විශ්‍රාම වැටුප් චක්‍රලේඛ අංක 3/2014 කෙරෙහි ඔබගේ කාරුණික අවධානය යොමු කරන්නේ නම් මැනවි.”

20. Furthermore, the following authorities have been considered in this regard,

Thirimavithana v Urban Development Authority 2010 2 SLR

*“(6) Legitimate or reasonable expectation may arise either from an **express promise given on behalf of a public authority upon the existence of a regular practice which the claimant can reasonably expect to continue.** There is a clear promise given by the UDA that the land would be kept as a the playground for the residents of the scheme - The petitioners also claim that they have been using this land as a play ground since 1964 when the housing scheme was originated. The promise had generated legitimate expectations in the minds of the petitioners to keep this land as a play ground.”*

Ariyaratne et al Vs Illangakoon et al, (SC FR 444/2012, dated 30.07.2019 at pp 56-57)

*"the first characteristic which will sustain a petitioner's claim that he has a substantive legitimate expectation the respondent public authority will act in a particular manner with regard to him, is that the petitioner must establish the public authority gave him a **specific, unambiguous and unqualified assurance that it will act in that manner (or,***

alternatively, that the respondent public authority has followed and established and unambiguous practice which entitled the petitioner to have a legitimate expectation the public authority will continue to act in that manner or that the facts and circumstances of the dealings between the public authority and the petitioner have created such an expectation"

21. It is pertinent to note that the Petitioner's wife, Mrs. U. L. Chandima passed away in 2013.

It was after her death, in 2014 that the Pensions Circular No. 03/2014 and Gazette bearing No. 1844/71 dated 2015.01.10 was released. Although the circular provided that the widowers and orphans under the scheme are granted time till 2014.12.31 to sign and fill the PD1A Form along with other necessary documents (which the Petitioner claims to have received), the Petitioner has not adduced any evidence or reason to confirm that he has indeed signed the forms and handed them over to the Department. Instead it is mentioned that he received a letter in August of 2015 stating that he would not be able to obtain the pension under the scheme. As such the Petitioner has not proved or provided to this Court sufficient evidence to state that he has followed the necessary precondition within the stipulate time frame as provided for by the Circular.

22. Thus it is the view of this Court that no specific, unambiguous and unqualified assurance was made to the Petitioner by the letter marked P4. Nevertheless, the Petitioner's argument that he was given a legitimate expectation of obtaining the pension under the relevant scheme cannot stand as he has not proved to this Court whether he has complied with the mandatory condition precedent set out in the said Circular.

WAS THE PETITIONER'S WIFE A CONTRIBUTOR TO THE SCHEME?

23. The Widows and Pensions Act No. 24 of 1983 has come into operation on 1st August 1983.

The said Act has been created to provide for the payment of pensions to widowers and orphans of female public officers. The Ministry of Public Administration has issued the Circular 231 on 28.11.1983 explains the eligibility criteria as follows:

'The eligibility to be a contributor is 'A female public officer appointed to a permanent and pensionable post prior to 1st August, 1983 and in service on that day can opt to join this scheme. The option to join should be exercised by such an officer before 01.02.1984 on the specimen form as in Annexe 'A' this option is irrevocable. Secretaries and Heads of Departments are requested to furnish a complete list of all such officers along with their option forms as early as possible, but not later than 1st April 1984'.

24. The Circular 231 has a prescribed form under Annex A where a female public officer can decide to opt to join the scheme. The Petitioner's late wife who came under Circular 231 has submitted the form under Annex A and had opted not to join the scheme as evident by the document marked 2R4 dated 02.02.1984. Subsequently, the Ministry of Public Administration had issued a Circular 291 dated 21.05.1985 affording the female public officers an opportunity to change/amend the option to join the scheme or not. (vide 2R5). However, the Petitioner's late wife has not changed her decision.

25. Section 4(i) of the Circular 03/2014 dated 25.03.2014 provides that officers recruited to Government Service prior to 01.08.1983 can if they have not expressed willingness or

unwillingness now opt to join the Scheme. However, the Petitioner's wife in 1983 opted out of the scheme and has thus expressed an unwillingness to enter the scheme and then passed away in 2013.

26. Although the Petitioner's wife has been presented with an opportunity to change her decision as evident by the Circular 291, she had decided not to transgress from her decision given under Circular 231. Thus, she cannot be classified as a contributor to the scheme. As the Petitioner's late wife had opted not to join the Scheme, she had made no contribution towards the Scheme. As she had never become a contributor to the pension scheme, the Petitioner is not entitled to claim a pension under the Widows and Orphans Pensions Act.

27. In the case of CA/WRT/379/2015 decided on 25.02.2019, Samayawardhena J. has dealt with a matter which had almost identical facts. Analysing the Section 3(6) of the Widower's and Orphans' Pension (Amendment) Act No.2 of 2001, His Lordship has stated as follows:

“The second part of section 3(6) is the relevant part for the purpose of this application. Let me reproduce it again for convenience:

Where any such officer has died prior to the coming into force of this subsection or dies before the date appointed for the purposes of this subsection without making an election as aforesaid, she shall, if she leaves a husband or child or a husband and child or a husband and children, be deemed to have elected to be a contributor to the Pension Scheme.

Accordingly, two conditions shall be satisfied for this section to be applicable.

(a) The officer shall die prior to the coming into force of this subsection or before the date appointed for the purposes of this subsection.

(b) The officer shall die without making an election to join the pension scheme.

I will first consider the (b) above. It is common ground that the deceased wife of the petitioner never became a contributor to the pension scheme. Not only that, she, while in service, in response to the Public Administration Circular No. 231 dated 28.11.1983, expressed her unwillingness to join the pension scheme.

I cannot accept the argument of the learned counsel for the petitioner that it shall not be considered as expressing unwillingness, but taken to mean that she maintained a neutral position. There was no choice as such in R1. In R1, there were only two choices: consent to join the pension scheme is given or not given. She has deleted 'not given'. If she wanted to maintain a neutral position, she could have remained silent without submitting R1. There could not have been any compulsion to fill that Form and hand it over to the Head of the Department. If she remained silent as such, for the purpose of section 3(6)(a) referred to above, she could have been treated as an officer who died "without making an election". Therefore, in my view, the petitioner does not satisfy (b) above. On the other hand, even if it is considered for the sake of argument that she died without making an election, for the petitioner to become a beneficiary, she should have, according to (a) above, died before 31.12.2005."

28. In the instant case too, the Petitioner's late wife has expressly opted out of the scheme and never changed her position until her death in 2013.

29. In paragraph 9 of the Petition, it is stated that one Mr. Gunathilake, the husband of Mrs. M.A. Indrani, bearing pension number -22/100006 and national Identity Card No. 47738083V who has also not given her consent to contribute to the pension scheme is receiving the W& OP pension every month. (vide P9). In response, the 2nd Respondent has stated that the Department of Pensions has sent a letter dated 26.06.2020 to the Divisional Secretary of Bandaragama informing them that in fact, Ms. M.A. Indrani had opted not to join the said scheme as per the Circular 231 and that to stop paying the pension to her widowed husband. Thus, the contention of the Petitioner is untenable.

30. For the forgoing reasons, the Petitioner has failed to establish legal right entitling any amount of Widowers and Orphans' pension which enabled him to claim a writ of *mandamus* against the 1st to 4th Respondents. Thus, the application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal