

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.

CA/WRT/0326/2025

Halpita Acharige Anura Chandralal,
No. 17, Dodangahahena,
Gothatuwa, New Town,
Angoda.

PETITIONER

Vs.

1. Director of Pensions,
Department of Pension,
Maligawatte,
Colombo 10.
2. S.T.M. Lasanthika,
Management Service Officer,
Department of Pension,
Maligawatte,
Colombo 10.
3. Registrar General,
Registrar General's Department,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

4. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

Before : B. Sasi Mahendran, J.
Adithya Patabendige, J.

Counsel : Nilanga Perera instructed by Neminda G. Kariyawasam for the Petitioner.
Zuri Zain, DSG for the Respondents.

Argued on : 01.09.2026

Written Submission

Tendered on : 21.09.2026 by the Respondents
23.09.2026 by the Petitioner

Decided on : 23.10.2026

Adithya Patabendige, J.

The Petitioner has invoked the writ jurisdiction of this Court under Article 140 of the Constitution, challenging the legality of a decision of the Director Pensions, the 1st Respondent, concerning the entitlement of his wife to benefits under the Widows' and Orphans' Pension Fund Ordinance.

The Petitioner was employed as a Machine Minder of the Colombo Municipal Council and retired from service on 25th December 2021.

The dispute arises from the refusal of the pension authorities to recognise the Petitioner's wife, Singappuli Arachchige Priyanthika, as being entitled to benefits under the Widows' and Orphans' Pension Fund Ordinance, on the basis of the Petitioner's marriage to her contracted before the decree *nisi* dissolving his first marriage was made absolute.

Reliefs Sought

The Petitioner seeks, *inter alia*, a mandate in the nature of a *writ of certiorari* quashing the decision contained in document marked **P5** insofar as the determination of the 1st and 2nd Respondents determined that his wife is not entitled to benefits under the Widows' and Orphans' Pension Fund Ordinance on the ground that the marriage contracted with her is invalid.

The Petitioner further seeks a mandate in the nature of a *writ of mandamus* directing the relevant Respondents to recognise his wife's entitlement to benefits under the Ordinance.

Factual Background

The Petitioner was previously married to Janaki Priyanthi, and they had one child from that marriage.

The Petitioner subsequently instituted divorce proceedings in the District Court of Gampaha in Case No. 42839/D on the ground of malicious desertion.

On 05th July 2000, the Petitioner's then wife, the Defendant in the said case, informed the Court that she did not contest the action. Evidence was thereafter led, and the Court entered judgment in favour of the Petitioner. The learned District Judge *inter alia* ordered the Petitioner to pay Rs. 50,000/- as permanent *alimony* and directed that the decree *nisi* be entered accordingly. However, the learned District Judge decided that the decree *nisi* be made absolute upon payment of that *alimony*.

The material before this Court shows that the Petitioner completed the payment of *alimony* on 02nd April 2001. The learned District Judge thereafter directed that the decree *nisi* be entered and fixed on 09th July 2001 for the decree to be made absolute.

In the meantime, on 12th May 2001, the Petitioner contracted a marriage with Singappuli Arachchige Priyanthika.

The decree *nisi* relating to the first marriage was ultimately made absolute on 24th August 2001.

Two children were born of the Petitioner's second union. The Petitioner states that he and his wife, Priyanthika, have lived as husband and wife for approximately twenty-four years.

After his retirement, an issue arose concerning his wife's entitlement under the Widows' and Orphans' Pension Fund Ordinance. By **P5**, the pension authorities declined to recognise the Petitioner's wife, Priyanthika, on the basis that the Petitioner's first marriage remained legally subsisting on the date of his second marriage.

It is also relevant that the pension authorities have recognised the children born of the second union as entitled to benefits.

The Issue

There is no real dispute regarding the material dates. The issue is not confined to whether the first marriage had been finally dissolved when the Petitioner contracted the second marriage. It extends to the question as to whether the pension authorities, in deciding entitlement under the Widows' and Orphans' Pension Fund Ordinance, properly applied the statutory scheme governing more than one marriage and whether they were entitled to treat the registered second marriage as invalid in the absence of a declaration of nullity by a competent Court.

Effect of the Decree *nisi*

At the outset, it is necessary to distinguish between the judicial determination made by the District Court, the formal entry of the decree *nisi*, and the subsequent making of that decree absolute.

Section 602 of the Civil Procedure Code provides that, when the Court is satisfied on the evidence that the plaintiff has proved his case, the Court shall pronounce a decree declaring the marriage to be dissolved in the manner and subject to the provisions and limitations contained in Sections 604 and 605.

Section 188 of the Civil Procedure Code provides that, as soon as may be after judgment is pronounced, the Court shall draw up a formal decree bearing the same date as the judgment, specifying in precise words the order made by the judgment.

Thus, once judgment has been pronounced, the subsequent drawing up and entry of the formal decree embodying that judgment is a ministerial act. The decree gives formal expression to the judicial determination already made and, under Section 188, bears the same date as the judgment. A delay in drawing up or entering the formal decree does not alter the date of the judgment which it records.

Section 604, however, introduces an important distinction. It provides:

“Every decree for dissolution of marriage shall, in the first instance, be a decree nisi not to be made absolute till after the expiration of not less than three months from the pronouncement thereof, or such longer period as the court may prescribe in the said decree.”

Accordingly, the formal entry of a decree *nisi* following judgment must not be confused with the subsequent making of that decree absolute. The former gives formal effect to the judgment already pronounced. The latter is a separate step contemplated by Section 604 and can take place only after the period prescribed by law, or such longer period as the Court may prescribe.

Section 625 of the Civil Procedure Code reinforces this distinction by permitting the parties to marry again only after the decree *nisi* has been made absolute, and not sooner.

In *Sathiyathan v. Sathiyathan* (1937) 39 NLR 241, the Court considered a marriage contracted after a decree *nisi* but before that decree had been made absolute. The Court held that the subsequent marriage was invalid. Thus, the pronouncement of judgment or the entry of a decree *nisi* does not, by itself, free a party to contract another marriage.

In the present case, the Court pronounced judgment in the divorce action on 05th July 2000. The learned District Judge directed that a decree *nisi* be entered and further directed that it be made absolute upon payment of Rs. 50,000/- as permanent *alimony*.

The material before this Court shows that the Petitioner made that payment on 02nd April 2001. By that date, the Petitioner had complied with the condition imposed by the District Court for the decree *nisi* to be made absolute. The learned District Judge thereafter directed that the decree *nisi* be submitted and the matter proceeded before the Court for the purpose of making it absolute.

Nevertheless, compliance with the condition imposed by the Court did not, by itself, make the decree *nisi* absolute. The decree was in fact made absolute only on 24th August 2001. Consequently, the Petitioner's first marriage remained legally subsisting until that date.

At the same time, a distinction must be drawn between the Petitioner's compliance with the condition imposed upon him and the subsequent completion of the court process. Once the Petitioner had paid the permanent alimony as directed, the remaining procedural steps had to be completed before the decree could be made absolute. There is no material before this Court to establish that the subsequent delay resulted from any failure on the part of the Petitioner to comply with the order of the Court.

The decree absolute entered on 24th August 2001 cannot operate retrospectively to dissolve the first marriage from the date of the earlier judgment. The first marriage therefore remained legally subsisting when the Petitioner contracted the subsequent marriage on 12th May 2001.

This, however, is not the end of the matter. The present application concerns entitlement under a particular statutory pension scheme. The consequences of the subsequent dissolution of the first marriage must therefore be considered in the light of Section 18 of the Widows' and Orphans' Pension Fund Ordinance before determining the legality of **P5**.

The Widows' and Orphans' Pension Fund Ordinance

Section 5(1) of the Widows' and Orphans' Pension Fund Ordinance places the general administration of the Ordinance in the Director of Pensions.

Section 27 provides, subject to the other provisions of the Ordinance, for pensions to widows and orphans of public officers who have contributed to the Fund.

Section 18 is particularly significant, as it expressly deals with the application of the Ordinance to a public officer having two or more wives.

Section 18 states thus:

“18. The application of this Ordinance to a public officer having two or more wives shall be subject to the following provisions: -

(1) Only the first in time of the existing marriages of such officer shall be deemed to be a valid marriage for the purposes of this Ordinance:

Provided, however, that a marriage, which has become the first in time of the existing marriages of such officer by reason only of the dissolution of an earlier marriage by a divorce, shall not be deemed to be so valid unless the divorce can itself be deemed to be valid under paragraph (2) of this section.

(2) A divorce dissolving any marriage of such officer shall be deemed to be a valid divorce for the purposes of this Ordinance if, but only if, that divorce has not at any time been preceded by a divorce dissolving any other marriage of such officer.

(3) Where any marriage of such officer becomes a valid marriage for the purposes of this Ordinance by reason of the dissolution of any other marriage of such officer, the date next following the date of such dissolution shall be deemed to be the date of the first-mentioned marriage for the purposes of the computation of any pension payable under this Ordinance to the wife of that marriage when she becomes a widow, or to any child born of that marriage when that child becomes an orphan.

(4) No pension under this Ordinance shall be awarded-

(a) to any wife of such officer whose marriage to him could not at any time during his lifetime have been deemed to be a valid marriage within the meaning of paragraph (1) of this section; or

(b) to any child of such officer born of any marriage which could not at the time of the birth of the child have been deemed to be a valid marriage as aforesaid.”

Reading subsections (1), (2) and (3) together, a marriage which was not initially the first in time may become valid for the purposes of the Ordinance upon the dissolution of the earlier marriage, provided the requirements of subsection (2) are satisfied. No material before this Court shows that the Petitioner’s first marriage was preceded by any other divorce. Under subsection (3), the date following the dissolution of the earlier marriage is deemed to be the date of the subsequent marriage for the computation of pension. As the Petitioner’s first marriage was dissolved on 24th August 2001, the deemed date of the subsequent marriage for the purposes of Section 18(3) is 25th August 2001.

This construction is further supported by Section 18(4)(a). The disqualification is not expressed by reference solely to the status of the marriage on the date on which it was

contracted. It applies where the marriage “could not at any time during his lifetime have been deemed to be a valid marriage” within the meaning of subsection (1). The words “*at any time during his lifetime*” must be given effect. They are consistent with the statutory possibility contemplated by subsections (1) and (3) that, following the dissolution of an earlier marriage, another marriage may thereafter become valid for the purposes of the Ordinance.

Thus, Section 18 does not permit the question of entitlement to be determined solely by reference to the status of the marriages on 12th May 2001. The subsequent dissolution of the first marriage on 24th August 2001 is a circumstance to which the Ordinance itself attaches legal consequences for the purposes of the pension scheme.

The Marriage Certificate

There is another matter of importance.

Section 52 of the Marriage Registration Ordinance provides that a certified copy or extract made in the manner contemplated by that section shall be received as *prima facie* evidence of the matter to which it relates, without further proof of the entry.

The Petitioner relies upon the marriage certificate relating to his marriage with his wife. That certificate therefore constitutes *prima facie* evidence of the matters recorded therein.

Section 52 does not make the marriage certificate conclusive evidence of the legal validity of a marriage. Nor can the existence of a certificate, by itself, cure a legal impediment affecting a marriage.

Nevertheless, there is an important distinction between saying that a certificate is not conclusive and permitting an administrative authority to pronounce a marriage *null* and *void*.

The Petitioner’s second marriage was registered on 12th May 2001. More than twenty years have elapsed since that marriage was registered. The parties have continued to live as husband and wife throughout that period. There is no material before this Court indicating that either party to that marriage, or any other person having a legitimate interest in its validity, has obtained a declaration from a competent Court that the marriage is *null* and *void*.

In *Ubeyratne v. Karunawathie and Others* (1999) 3 SLR 16, this Court considered questions concerning marriage, paternity and legitimacy.

The Court observed that “The question of validity of marriage, paternity and legitimacy of the children are personal matters to be decided by a Court of competent jurisdiction amidst the parties affected by the marital contract.”

The Court further observed that a third party should not have the legal right to attack the validity of such a marriage or its consequences.

The principle recognised therein is relevant. The validity of a marriage and the status flowing from it are matters of a personal nature that ordinarily fall to be determined by a Court competent to exercise matrimonial jurisdiction.

The Supreme Court gave the matter more direct consideration in *Thilaka Wadasinghe Liyanarathnage v. Hudson Samarasinghe, SC Appeal No. 22/2020, decided on 28th May 2025*.

There, the validity of a subsequent marriage was questioned on the basis of an earlier marriage. The issue arose in maintenance proceedings in which the Magistrate was required to determine whether the claimant was a “spouse” within the meaning of Section 2 of the Maintenance Act.

The Supreme Court considered Section 24(1) of the Judicature Act, No. 2 of 1978, as amended, and the relevant provisions of the Civil Procedure Code governing matrimonial jurisdiction and nullity.

Of particular importance is the conclusion of the Supreme Court that the Magistrate's Court could not determine the validity or otherwise of the marriage “in the guise of determining whether she is the “spouse” for the purposes of the Maintenance Act.

The Supreme Court concluded that, in the absence of a decree made by a competent Court to the contrary, the marriage evidenced by the marriage certificate remained effective for the purpose of determining the status of the claimant as a spouse.

That principle is highly relevant here.

The pension authorities undoubtedly possess jurisdiction to determine pension entitlement. But the existence of jurisdiction over the ultimate question of entitlement does not necessarily confer jurisdiction over every antecedent legal question irrespective of the jurisdiction which the law has conferred upon another Court or tribunal.

This Court subsequently considered the principle in *Thilaka Wadasinghe Liyanarathnage v. Hudson Samarasinghe* in *Ashila Dinesh Wijesundara Ranasinghe v. Divisional Secretary, Galenbindunuwewa and Others, CA (Writ) Application No. 0542/2025, decided on 5th May 2026*.

There too, administrative authorities questioned the validity of a marriage on the basis that there was no proof that an earlier marriage had been lawfully dissolved. This Court held that questions concerning the validity, nullity, and dissolution of marriage fall within the jurisdiction of the competent Court, and that an administrative authority cannot assume the existence or non-existence of a divorce without the relevant judicial determination.

This Court further observed that the administrative authority could not, either directly or indirectly, inquire into or determine the validity of the marriage in the absence of a decree of nullity or other declaration by a competent Court.

I see no basis to depart from that reasoning.

Prescription in Respect of the Offence of Bigamy

It may also be observed that, although the contracting of the subsequent marriage while the first marriage remained subsisting may have attracted the provisions relating to bigamy, more than twenty years have elapsed since that marriage was contracted. Any right of prosecution in respect of such offence is now barred by Section 456 of the Code of Criminal Procedure Act, subject to the exceptions provided therein. This does not, by itself, validate the marriage. It is relevant only as part of the legal background against which the pension authorities sought, more than two decades later, to treat the marriage as invalid.

Section 42 and the Power to Determine Pension Entitlement

The Respondents' statutory powers must nevertheless be considered in their entirety.

Section 42 of the Widows' and Orphans' Pension Fund Ordinance expressly contemplates questions arising as to whether a person is entitled to a pension as the widow or child of a public officer. It further provides that such questions be submitted to the Secretary to the Ministry charged with Public Administration for decision.

It cannot therefore be said that the pension authorities have no power to inquire into the facts necessary to determine whether a person is entitled to a pension as a widow or child. Such an interpretation would make administering the Ordinance impossible.

The Director of Pensions has No Power to Assume the Role of a Family Court Judge

The authority to determine pension entitlement under the Ordinance is not equivalent to jurisdiction to make a declaration of nullity under matrimonial law.

The pension authorities may examine the marriage certificate, the decree *nisi*, the decree absolute and other relevant material. They may apply Section 18 and the other provisions of the Ordinance to those established facts. They cannot, however, assume the jurisdiction of the competent Family Court and pronounce a registered marriage null and void.

This distinction also reconciles Section 42 of the Ordinance with the principle articulated by the Supreme Court in *Thilaka Wadasinghe Liyanarathnage v. Hudson Samarasinghe*. The Magistrate in that case had jurisdiction to determine whether the claimant was a “spouse” for the purpose of maintenance. Yet that statutory jurisdiction did not permit the Magistrate to determine the validity of the marriage by determining whether the claimant was a spouse.

The same principle applies here.

The Position Taken by the Respondents

The Statement of Objections removes any doubt as to the basis upon which the impugned decision was made.

The Respondents expressly maintain that the Petitioner’s second marriage was invalid in law and incapable of conferring legal rights arising from that marriage. They further contend that the officers of the Department of Pensions had a statutory duty to determine whether the second marriage was legally valid and that the impugned decision was made on that determination.

I cannot accept that proposition to the extent that it suggests the pension authorities were empowered to determine the validity of the marriage under general matrimonial law.

Sections 5, 18 and 42 of the Widows’ and Orphans’ Pension Fund Ordinance undoubtedly confer functions upon the pension authorities in determining pension entitlement. They do not confer matrimonial jurisdiction upon those authorities.

The Respondents’ position must therefore be considered in the light of the statutory scheme in Section 18 discussed above.

Application to P5

P5 must therefore be examined against this statutory and jurisprudential background.

The pension authorities were entitled to consider whether the Petitioner's wife satisfied the requirements imposed by the Widows' and Orphans' Pension Fund Ordinance.

They were also entitled to consider that the Petitioner's first marriage had not been dissolved by decree absolute when the second marriage was contracted.

However, they could not stop there.

As already observed, although the Petitioner's first marriage remained legally subsisting when the subsequent marriage was contracted, it was dissolved on 24th August 2001. Section 18 expressly attaches consequences, for the purposes of the Ordinance, to the subsequent dissolution of an earlier marriage.

In my view, **P5** proceeds upon an erroneous basis. It treats the second marriage as invalid and incapable of recognition because of the position that existed on 12th May 2001, without giving proper effect to the subsequent dissolution of the first marriage and the statutory scheme contained in Section 18.

The decision is therefore affected by an error of law and cannot stand.

Reliefs

Writ of Certiorari

The *writ of certiorari* is discretionary. In the circumstances of this case, however, **P5** cannot be permitted to stand insofar as the Petitioner's wife was denied recognition on the basis that her marriage to the Petitioner was invalid, without proper consideration of Section 18 of the Widows' and Orphans' Pension Fund Ordinance and in the absence of a declaration of nullity by a competent Court.

Accordingly, I issue a mandate in the nature of a *writ of certiorari* quashing **P5** to that extent.

Writ of Mandamus

The remaining question is whether this Court should merely quash the impugned decision and remit the matter to the Respondents for reconsideration, or whether a mandate in the nature of a *writ of mandamus* should issue as prayed for by the Petitioner.

The material facts are not in dispute. For the reasons already given, **P5** proceeds upon an erroneous application of Section 18 of the Ordinance. The Respondents have also disclosed in their Statement of Objections the basis upon which they consider the Petitioner's marriage incapable of recognition.

Considered cumulatively, these circumstances afford no justification for allowing the pension authorities to determine afresh whether the Petitioner's second marriage should be recognised for the purposes of the Ordinance. Remitting that question for reconsideration would leave unresolved a dispute that has already resulted in the present proceedings and would expose the Petitioner to further administrative proceedings and possible litigation.

The writ jurisdiction of this Court is invoked to afford effective relief. Where the material facts are established, and the legal consequence flowing from them leaves no further matter requiring an administrative determination, a *writ of mandamus* need not be withheld merely to enable the administrative authority to reconsider the same question.

I am therefore satisfied that this is an appropriate case in which *mandamus* should issue as prayed for.

Accordingly, a mandate in the nature of a *writ of mandamus* is issued directing the 1st and 2nd Respondents to recognise Singappuli Arachchige Priyanthika, the Petitioner's wife under the marriage registered on 12th May 2001, as entitled to the benefits claimed under the Widows' and Orphans' Pension Fund Ordinance, and to take all consequential steps necessary to give effect thereto in accordance with law.

This conclusion should not be understood as holding that the decree absolute entered on 24th August 2001 operated retrospectively. Nor is this Court exercising the original matrimonial jurisdiction vested in the competent Court. The conclusion reached is confined to the entitlement of the Petitioner's wife for the purposes of the Widows' and Orphans' Pension Fund Ordinance, based on the particular facts established in this application.

It is also relevant to note that the pension authorities have recognised the children born of the subsequent union as entitled to benefits. However, this application does not raise any issue concerning their entitlement. I therefore express no view on the basis upon which such entitlement was recognised.

Order

For the foregoing reasons:

1. A mandate in the nature of a *writ of certiorari* is issued quashing the decision contained in **P5** insofar as it refuses recognition to the Petitioner's wife on the basis stated therein.
2. A mandate in the nature of a *writ of mandamus* is issued directing the 1st and 2nd Respondents to recognise Singappuli Arachchige Priyanthika, the Petitioner's wife, under the marriage registered on 12th May 2001, as entitled to the benefits claimed under the Widows' and Orphans' Pension Fund Ordinance, and to take all consequential steps necessary to give effect thereto in accordance with law.

The application is allowed to the extent set out above.

I make no Order as to costs.

JUDGE OF THE COURT OF APPEAL

B. Sasi Mahendran, J

I agree.

JUDGE OF THE COURT OF APPEAL