

**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, Prohibition and Mandamus  
under Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.*

Withanage Kamani Perera,  
No. 473 Kahanthota Road,  
Hokandara.

**CA (Writ) App. No. 20/2023**

**PETITIONER**

**Vs.**

1. State Mortgage and Investment Bank
2. Dr. Udaya Sri Kariyawasam,  
Chairman
- 2A. Joseph Soosaihasan,  
Chairman
- 2B. Maheel Kuragama,  
Chairman
3. S. K. A. Galappatthi,  
Director
4. W. Chamila Niroshanee Cooray,  
Director
- 4A. Dr. C. N. S. Gamage,  
Director
5. Senaka Bandara,

Director

5A. W. S. Sathyananda,  
Director

6. H. C. Dilip Lal Silva,  
Director

7. K. R. Abeyesiriwardena,  
Director

7A. W. A. S. A. Perera,  
Director

8. H. N. N. Gunasekera,  
Director

8A. Aruna Panduka Ranasinghe,  
Director

9. R. M. J. C. K. Madawala,  
Assistant General Manager (Human  
Resources and Logistics)

10. I. T. Asuramanna,  
General Manager/Chief Executive  
Officer

11. Prof. D. A. M. Perera,  
Director

11A. Muhamdiramge Tyrone Anthony,  
Director

12. S. J. D. Cooray,  
Director

12A. Don Rohana Lal Wickramasinghe,  
Director

All of:  
State Mortgage and Investment Bank,  
No. 269, Galle Road, Colombo 03.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Shaheeda Barrie with Nisala Seniya Fernando instructed by Thushani Jayawardane for the  
Petitioner.

Kuvera de Zoysa, P.C. with Samuditha Kumarasinghe instructed by Athula Silva  
for the Respondents.

**Argued on:** 09.02.2026

**Delivered on:** 02.04.2026

**Dr. D. F. H. Gunawardhana, J.**

## **Judgement**

### **Introduction**

The Petitioner is an Attorney-at-Law, and having submitted her application, she has joined the 1<sup>st</sup> Respondent Bank as a legal officer. She has received her promotions in due course until she reached the age of fifty-five years. However, at the age of fifty-five years, she had asked for an extension, which the 1<sup>st</sup> Respondent Bank initially granted on two occasions but later had refused. In those circumstances, the Petitioner had instituted an application in this Court, challenging the said decision of the Respondent bank, and obtained relief which is reflected in the judgement of this Court, marked as **P10**.

Though she was declared to continue in her service, the Respondent bank has denied her back wages and other emoluments during the time that she was forcibly retired. Arising from the said dispute, the Petitioner has instituted the above-styled Application in this Court to obtain *inter alia* the following relief;

*“(f) grant and issue a mandate in the nature of a Writ of Certiorari to quash the decision of the Respondents to not pay the Petitioner, back wages, salary increments, bonus payments, and all other emoluments and entitlement deprived to the Petitioner, from 15.09.2020 to date;*

*(g) grant and issue a mandate in the nature of a Writ of Certiorari to quash the decision of the Respondents to not pay the Petitioner back-wages for the period of 15.09.2020 to 16.08.2022 as evinced by the document marked P13;*

*(h) grant and issue a mandate in the nature of a Writ of Certiorari to quash the decision of the Respondents to not pay the Petitioner salary increments due on the period from 15.09.2020 to 16.08.2022 as evinced by the document marked P13;*

*(i) grant and issue a mandate in the nature of a Writ of Certiorari to quash the decision of the Respondents to not pay the Petitioner's annual bonus and/or profit bonus for the period of 15.09.2020 to 16.08.2022 as evinced by the document marked P13;*

*(j) grant and issue a mandate in the nature of a Writ of Certiorari to quash the decision of the Respondents to not pay the Petitioner her salary increments due and owing her as of 16.09.2018, as a result of the document marked P7 in case number Writ Application bearing number 309/20 being quashed;*

*(k) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents to pay the Petitioner, back wages, salary increments, bonus payments, and all other emoluments and entitlement deprived to the Petitioner, from 15.09.2020 to date;*

*(l) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner back-wages for the period of 15.09.2020 to 16.08.2022;*

*(m) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner salary increments due on the period from 15.09.2020 to date;*

*(n) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner the annual bonus due for the period from 15.09.2020 to date;*

*(o) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner the profit bonus awarded to the employees of the 1<sup>st</sup> Respondent Bank for the period from 15.09.2020 to 16.08.2022 and any period thereafter;*

*(p) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner all entitlements for the period from 09.08.2022;*

*(q) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner gratuity on her salary at the time of retirement, on the basis of unbroken service of a period of 23 years (Subject to the deduction of the sum of LKR 2,173,242.28 deposited into her account as gratuity);*

*(r) grant and issue a mandate in the nature of a Writ of Mandamus compelling the Respondents, and/or any one or more of them and/or their servants and agents, and/or their successors in office to pay the Petitioner her salary increment due and owing to her as at 16.09.2018;”*

After the issuance of formal notice, the Respondents have filed their respective Objections, and thereafter, this was argued before me on 09.02.2026; hence, this judgement.

## **Arguments**

The first contention of Ms. Barrie is that a right has been accrued to the Petitioner to invoke the jurisdiction of this Court emanating from the judgement marked as **P10**, since **P10** has declared that the Petitioner is entitled to continue to have her extension; therefore, a right will continue from the forcible retirement, without giving the extension.

The second contention is that the extension was without any discontinuation or break. She relied upon Justice Ganepola's judgement in the case of *Karunarithna and Others v. Chairman of Administrative Appeals Tribunal and Others*<sup>1</sup> to buttress her argument on the continuation.

Her next argument is that the absence of the Petitioner from her work was caused due to the wrongful act of the Respondents; paragraph 23 of the Petition clearly explains this. Therefore, discontinuation *de facto* was caused by the Respondents, and not *de jure*.

Her final contention is that the Petitioner has utilised her gratuity released to her, with the expectation of setting off the same once her salary and back wages are received by her against such utilisation. During the time that she was without a job, she was deprived of having a salary.

Finally, Ms. Barrie argued that there is legitimate expectation of receiving her salary to set off against the said gratuity.

On the other hand, Mr. De Zoysa, P.C. argued that **P10** only postulates prospective and not retrospective. In addition to that, he argues that **P10** is res judicata, and no new case can be

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<sup>1</sup> CAW/88/2021 (CA Minutes 17.06.2022)

maintained; therefore, this Application should fail. He relies on *Sinniah v. Eliakutty* [1932]<sup>2</sup> and *Stassen Exports Limited v. Lipton Limited and Another* [2009]<sup>3</sup>.

Finally, he argued that retirement is at the age of fifty-five years, and extension is only at the pleasure; therefore, as of right, the Petitioner cannot ask for retirement, as confirmed by **P10**. In reply, Ms. Barrie contended that there is no discontinuation of service as per **P10**; as such, it is common sense to say that there is no break of service.

### **Factual matrix**

The Petitioner, having obtained an LLB degree from the University of Colombo, was enrolled as an Attorney-at-Law of the Supreme Court in 1991. The Petitioner has placed before Court the documents marked as **P1(a)** to **P1(d)** to establish those facts.

Thereafter, the Petitioner was recruited as a Class II Legal Officer of the 1<sup>st</sup> Respondent Bank with effect from 21.02.2000; later, with the restructure of the cadre, the Petitioner's post came to be known as 'Deputy Manager - Legal'.

Thereafter, the Petitioner was promoted to Manager – Legal in 2009, and then Chief Manager – Legal with effect from 16.09.2013, and then served as the Acting General Manager – Recovery until 2018 for the 1<sup>st</sup> Respondent Bank; the document marked and annexed to the Petition as **P2** establishes the same.

However, the first extension of the Petitioner's service was given with effect from 15.09.2018 to 14.09.2019, as reflected in the document marked and annexed to the Petition as **P3(a)**. Subsequently, the Petitioner's services were so extended for two more years as reflected in the

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<sup>2</sup> 34 NLR 38 (SC Minutes 09.05.1932)

<sup>3</sup> 2 Sri L.R. 172 (SC Minutes 19.11.2009)

letter marked as **P3(b)** annexed to the Petition. However, when the Petitioner asked for a further extension for the year 2020, and the 1<sup>st</sup> Respondent had informed the Petitioner that her extension was refused, which is reflected in the document marked and annexed to the Petition as **P5**.

Consequently, the Petitioner challenged the same before this Court in the Writ Application bearing No. 309/2020. By the judgement of this Court, marked and annexed to the Petition as **P10**, the Petitioner was reinstated, and thereafter, served in the 1<sup>st</sup> Respondent Bank up until her retirement in 2021.

### **The Petitioner's complaint**

Thereafter, the Petitioner had asked for her back wages and other emoluments to which she is entitled to as the General Manager of Recoveries of the 1<sup>st</sup> Respondent Bank, which the Respondents denied by the letter dated 25.10.2022, which is marked as **P13** annexed to the Petition. Therefore, the Petitioner seeks the intervention of this Court to recover the same.

### **Objections**

In the forefront of the Objections of the Respondents, what is stated is that the Petitioner is not entitled to any back wages during the time she did not serve until the said judgement was given in the case of CA (Writ) 309/2020. As there was a break in the Petitioner's service between the period of 14.09.2020 to 16.08.2022, which is almost a two-year period; thus, during that time, the Petitioner is not entitled to any back wages or other emoluments; therefore, the Board of Directors had taken a decision as evidenced in **P13**, which is the document the Petitioner is challenging in this Application, that the Petitioner is not entitled to back wages.

Thereafter, the Petitioner has filed her Counter Affidavits, denying the above-mentioned matters, and has marked and annexed certain documents to support it. I will refer to them when necessary.

The Petitioner is challenging **P13** by which the Board of Directors of the 1<sup>st</sup> Respondent have decided not to give the Petitioner's back wages or any emoluments during the time where her employment period was broken. When this was argued, it was also argued on behalf of the Petitioner that the break of her service was not due to her fault, but due to the fault of the Respondents, and the letter marked as **P5** annexed to the Petition was challenged in the writ application bearing No. 309/2020, where Their Lordships of this Court had decided that the Petitioner is entitled to report to work from the date of the judgement and the denial of her extension which she sought had been refused by the document marked as **P5** annexed to this Petition is wrongful and irrational, as she had legitimate expectation; and accordingly, she was given an extension until she retires.

However, when she retired and asked for her back wages and other emoluments for the period during which she had been deprived of her employment, salary and other emoluments, the Board of Directors by **P13** have refused to pay them. Therefore, it is argued that **P13** is irrational, and this is a new cause of action that has emanated from the decision taken in **P13**; thus, though the Respondents argued in the course of their Arguments and Written Submissions, what is decided by **P10** is *res judicata*, and therefore, that cannot be re-heard through this Application. Everything is *res judicata* by reason of the judgement given in CA (Writ) Application No. 309/2020, marked as **P10** annexed to the Petition.

Now I will consider what is decided by **P10**.

For further clarity, the relevant parts of the document marked as **P10** is reproduced below;

*“The learned President’s Counsel appearing for the Respondents has drawn the attention of Court to the fact that the Petitioner has not sought extensions beyond September 2021*

*in the Petition and argued that since the extension sought in the Petition is from September 2020 to September 2021 and that period has already lapsed, this application is academic. Nevertheless, as per the Administration Circular regarding the extension of services of the Bank employees marked as P24(a), the Petitioner is entitled for extensions up to 60 years of age. The Petitioner will be completing 59 years on 15.09.2022 as per her birth certificate marked as P1(d). Therefore, even though the Petitioner has not sought an extension from 14.09.2022 to 15.09.2023 as a relief in the Petition, I am of the view that no prejudice could be caused to the Respondents if the Court make an order to grant an extension to the Petitioner for a period from today till 15.09.2023.*

*The learned President's Counsel has also argued that the Petitioner is not entitled to reliefs regarding the increment and bonus for the reason that she has not come to Court seeking reliefs within a reasonable time. The Petitioner has come to Court seeking reliefs on the increment and the bonus respectively 2 and 1 ½ years later from the denial. ....*

*... I hold that the Petitioner is entitled to writs of Certiorari as prayed for in paragraphs 'c' to 'e' of the Petition to quash the decisions containing in the document marked as P23 and P7 and writs of Mandamus directing the Respondents to grant an extension to the Petitioner in the post of Chief Manager (Legal) up to 15.09.2023 **from today, directing the Respondents to pay the increment to the Petitioner from 16.09.2018 to 14.09.2019 and bonus for the entitlements for the period from today until 15.09.2023. Writs of Certiorari and Mandamus are issued accordingly. The Respondents should pay Rs. 75,000/- as costs of this application to the Petitioner.***” (Emphasis is mine)

On a perusal of the above, as I understand, what is decided in **P10** is not a denial of salary or emoluments during the said break. According to that, the Petitioner was awarded all increments

from 16.09.2018 including back wages. However, the denial was caused by reason of the refusal by the Respondents by way of the document marked as **P5** annexed to this Petition, and the same was challenged in the previous application which resulted in **P10**. The salaries owed during that time had not been paid up until its denial by **P13**, including other emoluments. Therefore, a new cause of action has arisen for the Petitioner to challenge **P13**, only after **P13** was issued; thus, for that reason, the Respondents' argument cannot be accepted.

In addition to that, it is my view that the 1<sup>st</sup> Respondent Bank and its officers were responsible for the denial of the extension; therefore, they are responsible for the break caused in the Petitioner's employment service. If not, the Petitioner was prepared to work from the date that her extension was denied, which is why she had challenged it in the said previous writ application. As such, the Respondents are responsible for such a denial, and are therefore, under a duty to pay the back wages and other emoluments.

### **Abuse of power**

Therefore, it is a very rational thing that the Petitioner has sought; thus, such a denial contained in **P13** is irrational because the 1<sup>st</sup> Respondent and its directors are responsible for causing such denial of her extension. Thus, it is my view that the Petitioner is entitled to back wages and other emoluments as well.

I am further of the view that by denying the back wages and other emoluments of the Petitioner till it was decided that her employment should be extended, the Respondents have abused the power conferred on them.

In support of my view, I rely on the following passages of Wade and Forsyth in the authoritative textbook "Administrative Law";

*“... If there is power to act, but the power is abused (i.e. by breach of natural justice or error of law), the quashing order will quash the decision and a mandatory order may issue simultaneously to require a proper rehearing. ....*

*H. Requirement of Demand and Refusal:*

*It is considered that, in order for a mandatory order to be issued, the applicant must have first expressed their demand to the defaulting authority, asking it to perform its duty, and the authority must have refused. This is viewed as an ‘imperative rule’ or, otherwise put, as a prerequisite for the issuance of the mandatory order. However, in practice, these formalities are usually fulfilled by the conduct of the parties prior to the application and refusal to perform the duty is readily implied from conduct. The substantial requirement, therefore, is that the public authority has been clearly informed as to what the applicant expects it to do so that it can decide whether to act or not.’<sup>4</sup>*

**Legitimate expectation**

In this case, as mentioned above, the Petitioner had been declared by **P10** (the judgement of this Court in the Writ Application No. 309/2020) that she is entitled to all increments and other entitlements. Therefore, that entails for her to legitimately expect all back wages and emoluments which was deprived of her by the wrong decision contained in **P5**. Thus, the refusal contained in **P13** is liable to be quashed.

To buttress my reasoning, I rely upon the following passage in Wade and Forsyth of the authoritative textbook “Administrative Law”;

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<sup>4</sup> Wade, W., & Forsyth, C. (12<sup>th</sup> Edition, Oxford University Press 2023). *Administrative Law*, Part VII Chapter 16, pp. 499-500.

*“...the protection of legitimate expectations is often considered to be required by fairness. On the other hand the abuse of power has been considered the ‘root concept’ justifying the protection of legitimate expectations. Particularly in the European context ‘legal certainty’, i.e. that ‘the individual ought to be able to plan his or her action on the basis [that the expectation will be fulfilled] is also relied upon. But as Lord Justice Laws has remarked; ‘Abuse of power...catches the moral impetus of the rule of law... But it goes no distance to tell you, case by case, what is lawful and what is not.’ And similar remarks could be made about the other reasons for protecting of legitimate expectations.*

*A further and more satisfactory reason for the protection of legitimate expectations lies in the trust that has been reposed by the citizen in what they have been told or led to believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and government becomes a choice between chaos and coercion. The protection of trust as a concept has its origins in German law and it plainly overlaps with the protection of ‘legal certainty’. But it has this particular advantage: it is a simple concrete question of fact whether trust has been reposed in an official’s promise, so this principle does go ‘some distance’ to indicate which expectations should be protected and which should not. It captures precisely why legitimate expectations should be protected.”<sup>5</sup>*

### ***Res judicata does not arise***

The issue of *res judicata* does not arise since a new course of action has arisen by reason of the denial of the payment of back wages during the break of her service which was caused by the

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<sup>5</sup> Wade, W., & Forsyth, C. (12<sup>th</sup> Edition, Oxford University Press 2023). Administrative Law, Part VI Chapter 14, pp. 435-436.

decision of the Respondents reflected in **P5**, and the new course of action had arose thereafter by reason of the decision taken in **P13**, which is only in relation of the period of the break. Therefore, the question of *res judicata* does not arise in this instance because to establish *res judicata*, the party who raises it must prove that the same issue in contention is between the same parties and on the same course of action, which is not what has happened here.

### **Conclusion**

For the reasons adumbrated above, I issue the *Writ of Certiorari* sought to quash the decision contained in **P13**. In addition to that, I issue a *Writ of Mandamus* to compel the Respondents to pay the relevant back wages and other emoluments owed for during the break for which the 1<sup>st</sup> Respondent Bank and its directors and management are responsible for causing. Thus, I grant the relief as sought for in the prayers (f) to (r) of the Petition.

In addition to that, a sum of Rs. 42,000/- (Forty-Two Thousand Rupees) is granted as cost of litigation from the Respondents.

**JUDGE OF THE COURT OF APPEAL**