IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for special leave to appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka under in terms of Article 128(2) of the Constitution read with the Supreme Court Rules of 1990.

1. Dayanthi Dias Kaluarachchi,
   Hitiyawatta,
   Kodagoda, Imaduwa.

   And 03 others

Petitioners

-Vs-

SC/ Appeal 43/2013
Spl./L.A. No. 94/2010
Court of Appeal Writ
Application 318/2007

1. Ceylon Petroleum Corporation,
   No:109, Rotunda Tower
   Galle Road, Colombo 03.

   And 64 Others

Respondents

AND NOW BETWEEN

1. Ceylon Petroleum Corporation,
   No: 109, Rotunda Tower,
   Galle Road, Colombo 03.

2. Chairman,
   Ceylon Petroleum Corporation
   No: 109, Rotunda Tower,
   Galle Road, Colombo 03.

3. Senior Legal Officer,
   Ceylon Petroleum Corporation,
   No: 109, Rotunda Tower,
   Galle Road, Colombo 03.

4. Deputy General Manager (Finance),
   Ceylon Petroleum Corporation,
   No: 109, Rotunda Tower,
   Galle Road, Colombo 03.

5. Deputy General Manager,
   (Administration),
   Ceylon Petroleum Corporation,
   No: 109, Rotunda Tower,
   Galle Road, Colombo 03.

Respondents-Petitioners

-Vs-

1. Dayanthi Dias Kaluarachchi,
   Hitiyawatta,
   Kodagoda, Imaduwa.
   (**Deceased)**

1A. Sunethra Dias Kaluarachchi,
   Pussewatta, Kodagoda,
   Imaduwa.

1B. Ranjith Dias Kaluarachchi,
   45/19, Neligama,
   Meerigama.

1C. Manel Dias Kalurachchi,
   Pussewatta, Kodagoda,
   Imaduwa.

1D. Sujatha Dias Kaluarachchi
   27, Madawalamulla, New Road,
   Galle.

Substituted Petitioner-Respondents

2. Don Nalaka Rasika Sarath Hettiarachchi,
   Samagi,
   Gelioya.

3. Sunil Rajapaksha,
   103/95, Dharmaraja Mawatha,
   Kandy.

4. Herath Mudiyanselage Abeykoon,
   29A, Godagandeniya,
   Peredeniya.

Petitioners-Respondents

S.N.T. Palihena,
Member of the Board of Directors,
Ceylon Petroleum Corporation
No: 109, Rotunda Tower,
Galle Road, Colombo 03.

And 59 Others

Respondents-Respondents

Before: Sisira J de Abrew, J
Vijith K. Malalgoda, PC. J, and
Murdu N.B.Fernando, PC. J.

Counsel: Milinda Gunathilake, DSG for Respondents -Petitioners.
Saliya Pieris, PC with Rukshan Nanayakkara for Petitioners-Respondents

Argued on: 14.06.2018

Decided on: 19.06.2019

Murdu N.B. Fernando, PC. J.

The 1st to 5th Respondents-Petitioners (Ceylon Petroleum Corporation and its officials- "the Appellants") came before this Court being aggrieved by the Judgment of the Court of Appeal dated 29-04-2010 wherein a Writ of Mandamus was issued directing the Ceylon Petroleum Corporation to pay the Petitioners-Respondents ("the Respondents") certain salary arrears.

This Court on 01-03-2013 granted the Appellant Ceylon Petroleum Corporation, Special Leave to Appeal on the following questions of law.

(a) Did the Court of Appeal err in law in holding that the matters in dispute did not arise directly from a contract of employment between parties?

(b) Did the Court of Appeal err in law by holding that the circular marked P6 issued by the 1st Petitioner Corporation is an exercise of the power vested in the Minister under Section 7(1) of the Act?

(c) Did the Court of Appeal err in law in holding that the Respondents have a substantial legitimate expectation that the salary revision will be paid to them after retirement in terms of the circular P6?

(d) Did the Court of Appeal err in law in issuing a Writ of Mandamus to enforce a legitimate expectation?

(e) Did the Court of Appeal err in law in issuing a Writ of Mandamus without considering whether a public statutory duty existed?

(f) Did the Court of Appeal err in law by failing to consider that the Respondents had not sought relief in respect of the decision of the Commissioner of Labour?

(g) Did the Court of Appeal err in law in failing to consider that the Respondents had by documents marked 1R5 to 1R8 accepted that all dues under the VRS had been paid?

The 1st Appellant to this Appeal Ceylon Petroleum Corporation is a statuary Corporation established under Ceylon Petroleum Corporation Act No 28 of 1961. The 2nd to the 5th Appellants are the Chairman and three officials of the Ceylon Petroleum Corporation ("CPC") respectively.

On 15-10-2002, CPC offered a Voluntarily Retirement Scheme (VRS) to its employees by circular bearing No 1515 and called for applications by 15.11.2002. On 13-11-2002 by circular bearing No 1515A the date for tendering the applications was extended to 30.11.2002. (The said two circulars were annexed to the petition filed before the Court of Appeal as P5 and P6). Approximately 1500 employees accepted the said VRS and retired from service with effect from 31.12.2002 and within a month of retirement all employees were paid their due financial entitlements.

The Respondents (the four petitioners before the Court of Appeal) availed of this opportunity and retired from the CPC with effect from 31.12.2002 except the 4th Respondent whose application for VRS was considered subsequent to issuance of circular No 1515B (IR10) which permitted an appeal process and was retired from service on 01-04-2003. (For convenience date of retirement is referred to as 31.12.2002)

Five years after retirement the said four former employees of CPC (the Respondents) filed a writ application before the Court of Appeal and moved court for Writs of Certiorari and Mandamus among other reliefs. (vide prayer (c) and (d) of the petition)

The reliefs stated in prayers (c) and (d) are reproduced below *in verbatim*.

(c) issue a writ of certiorari quashing the said decision of the cabinet made on 27-08-2003 contained in the cabinet paper marked "P16" read together with the cabinet memo marked "P17" refusing payment of the unpaid balance of the arrears of salary revision of year 2000 to the VRS employees aforesaid.

(d) issue a writ of mandamus directing the 1st to 8th Respondents to pay the petitioners their unpaid balance of their arrears of salary revision of year 2000 aforesaid.

The Court of Appeal by its Judgment dated 29-04-2010 refrained from granting the writ of certiorari but granted the writ of mandamus and the appellants are before this Court being aggrieved by the said judgment.

The case presented by the four former employees of the CPC before the Court of Appeal was that though they retired from service on 31-12-2002 and obtained the compensation package under the VRS, that they were not paid arrears of the salary revision granted to the remaining employees of CPC consequent to the cabinet decision dated 27-08-2003 and their legitimate expectation was frustrated by the said decision.

The response of the CPC in the Court of Appeal, to the said contention was that the CPC granted the VRS compensation package as a full and final settlement and the respondents accepted the said settlement voluntarily and signed a declaration to that effect and retired on 31.12.2002; there was no collective agreement signed between the employer and the employees to effect a salary revision once in every three years as envisaged in the petition; a trade union went before the Court of Appeal to rectify/eliminate salary anomalies of CPC prior to implementation of the VRS but the Court of Appeal dismissed the said application; the Commissioner General of Labour has upheld the position that the employees who voluntarily retired under the VRS and obtained all statuary emoluments are not entitled to salary revisions and increments subsequently granted to the employees who did not avail of the VRS; VRS does not arise out of a statutory duty of the CPC; the contracts of employment of the respondents do not come within the realm of writ jurisdiction; the application before the Court of Appeal is futile and no good or valid reasons have been given in the petition to explain the delay of four years in coming before the Court of Appeal.

The Court of Appeal in its judgment at page 12, states thus,

"The grievance of the petitioners is the nonpayment of the arrears of salary in view of the salary revision of the year 2002. The learned Senior State Counsel who appeared for the respondents also agreed that the only consequence of the aforesaid Cabinet Decision P16 is to grant certain salary revisions and advances to current employees and to those who have died or retired under normal circumstances on or after 01.05.2003 of the Ceylon Petroleum Corporation. Therefore the said Cabinet Decision would not be a bar to grant the relief sought by the petitioners. In these circumstances the decision of the Commissioner General of Labour communicated by his letter dated 02.11.2004 to the effect that Voluntary Retirement Scheme employees are not entitled to the said arrears of salary revision

as the cabinet has taken a decision on 27.08.2003 refusing payment of it to them is erroneous."

This Court observes that the judgment does not refer to prayer 'c', nor to the writ of certiorari prayed for by the petitioners. It does not refer to the preliminary objections raised pertaining to laches. It does not give reasons for its conclusion that the opinion of the Commissioner General of Labour is erroneous.

Further this court observes that the Court of Appeal held that the only consequence of the cabinet decision P16 dated 27-08-2003 is to grant certain salary revisions and advances to 'current employees of CPC and to those who have died or retired under normal circumstances on or after 01-05-2003.'

In the Cabinet Memorandum the term 'current employees' and the rationale for granting the salary revision has been clearly identified as present employees and those who have died or retired under normal circumstances on or after 01-05-2003, excluding those who have retired under VRS, on condition that over time work of the employees will be curtailed to the minimum so that such increase will be set-off by such curtailment of overtime.

It is also observed that the Court of Appeal did not grant the principal relief (prayer c) sought from the Court of Appeal a writ of certiorari to quash the cabinet decision dated 27-08-2003 refusing payment of an unpaid balance of salary arrears to persons who retired under the VRS as prayed for. The reasons for non-granting of the writ of certiorari is not enumerated in detail in the judgment, but as seen above the learned judges concur that the cabinet decision moved to be quashed is not a bar to grant the relief sought, as the cabinet decision only pertains to granting of a salary revision to current employees.

Clearly, the respondents do not come within the term 'current employees'. The respondents were not 'present employees as at 27-08-2003, nor retired under normal circumstance after 01-05-2003 but retired under VRS with effect from 31.12.2002' and specifically excluded from the salary revision. Therefore, the non-issuance of the writ of certiorari and non-granting the principal relief sought from the Court of Appeal is proper and justified.

Having correctly refrained from issuing a writ of certiorari in the first instance, the Court of Appeal went on to issue a writ of mandamus, a mandatory order, 'directing the 1st to 8th respondents to pay the petitioners their unpaid balance of their arrears of salary revision of year 2000' aforesaid, on the ground that the petitioners have a substantive legitimate expectation for the payment of their unpaid salary arrears as provided in the Circular P6, upon the basis that the circular P6 has a statutory underpinning and the four former employees have a legitimate expectation in obtaining the benefits accrued to them by the salary revision.

Prior to discussing the issuance of writ of mandamus, let me consider another matter that was raised before this Court as a preliminary objection i.e. laches. The counsel for the appellants strenuously argued that the Court of Appeal should have dismissed the application in limine on the ground of laches as firstly, four years had lapsed between the decision complained of and the filing of the petition in the Court of Appeal and secondly, as no good and valid reasons have been given in the petition to explain the delay.

It is an undisputed fact that the respondents accepted the VRS and retired from service on 31.12.2002. The matter in issue is the subsequent salary increment granted to the current employees on 27.08.2003 and the entitlement of the respondents for same. The respondents went before the Court of Appeal on 21.03.2007, four years after the said decision to grant a salary increment on 27.08.2003. Thus, on the face of the record four years had lapsed prior to the respondents seeking the discretionary remedy of a writ and no good and valid reasons have been given by the respondents in the petition filed in the Court of Appeal pertaining to same. In the written submission filed before this Court the respondents make an attempt to give reasons for its delay but such belated reasons given before this Court cannot be considered as good and valid reasons to justify delay in seeking a review of an administrative decision. Reasons should have been given when the application was filed in the Court of Appeal and not now. Thus, there is merit in the argument of the appellant, that the respondents were guilty of delay and the writ application filed before the Court of Appeal should have been dismissed in limine.

In the Supreme Court decision **Biso Menike Vs Cyril de Alwis 1982 (1) SLR 368 at page 377 to 378** Sharvananda J (as the then was) has held that.

> "a writ of certiorari is issued at the discretion of the Court. It cannot be held to be a writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by well accepted principles. The court is bound to issue a writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver…….The proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a writ application dwindle and the Court may reject a writ application on the ground of unexplained delay…….An application for a writ of certiorari should be filed within a reasonable time from the Order which the applicant seeks to have quashed."

In **Seneviratne Vs Tissa Bandaranayake and another 1999(2) SLR 341 at page 351**, Amerasinghe J adverting to the question of long delay, commented that.

> "if a person were negligent for a long and unreasonable time, the law refuses afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, *nam leges vigilantibus, non dormientibus, subveniunt,* and for other reasons refuses to assist those who sleep over their rights and are not vigilant."

In **Issadeen Vs the Commissioner of National Housing and others 2003 (2) SLR 10 at page 15,** Amerasinghe J held that;

> "although there is no statutory provision in this country restricting the time limit in filling an application for judicial review and the case law of this country is indicative of the inclination of the court to be generous in finding a good and valid reason for allowing late applications, I am of the

view that there should be proper justification given and explained in the delay in filling such belated application."

Based upon the above judicial dicta, I am inclined to accept the contention of the appellants that the Court of Appeal should have dismissed this application in limine on the ground of laches which was a threshold issue. The Court of Appeal did not consider the ground of laches, which was raised as a preliminary objection. I observe this omission as a grave error in the Court of Appeal Judgment.

Let me, now move onto, the issuance of a writ of mandamus by the Court of Appeal.

When granting the said relief, the Court of Appeal relied on three judgments. One was from the Court of Appeal and two from the Supreme Court. The two judgments of the Supreme Court pertain to fundamental right applications.

In the first instance, I wish to refer to the facts pertaining to the said cases, which I consider are vastly different to the facts of the instant appeal and therefore can be easily distinguished.

In the 1st fundamental rights application namely, **Sirimal and others Vs Board of Director of the Co-operative Wholesale Establishment (CWE) and others 2003(2) SLR 23**, optional age of retirement of employees at CWE, which was 55 years of age with a right to seek extensions up to 60 years of age was changed by way of a circular to make retirement compulsory at 55 years. The Supreme Court held that the petitioners had a legitimate expectation of receiving extensions up to 60 years (except where medical or disciplinary grounds were present) and further went on to hold that if it is sought to change conditions of service denying the right of extension, the employees should be given a reasonable time and an opportunity of showing cause against change and therefore the decision of the CWE to change the age of retirement is not warranted either upon consideration of public interest or upon principles of fairness and the petitioners were entitled to seek relief for violation of fundamental rights even if there were other remedies to pursue, namely applications to the Labour Tribunal or Arbitration in terms of the CWE Act.

In the 2nd fundamental rights application, **Dayaratne and others Vs Ministry of Health and Indigenous Medicine and others 1999(1) SLR 393,** the Ministry of Health called for applications from persons desirous in following a course of training leading to the award of the certificate of competency as Assistant Medical Officers and the petitioners applied and sat the competitive examination. Prior to holding of the interviews to check the qualifications in order for the petitioners to be enrolled for the said course, upon pressure yielded by the GMOA, holding of the said training course was cancelled and by a circular letter the petitioners were given the option of following another course, a course for paramedical services (pharmacists, medical laboratory technologists, public health inspectors). Based upon the facts it was held that the petitioners had a legitimate expectation that they would upon satisfying prescribed conditions, be provided with a course of training for the examination leading to the award of the certificate of competency as Assistant Medical Practitioners (AMP's) and the decision effecting a change of policy destroyed the expectations of the petitioners and in deciding of this change of policy only the views of the GMOA was considered and not the views of the AMP's nor the petitioners and hence the rights of the petitioners guaranteed under Article 12(1) of the Constitution were violated. Court further held that where a change of policy is likely to frustrate the legitimate expectation of individuals, they must be given an opportunity of stating why the change of policy should not affect them

unfavorably and such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution.

In the said two cases, a public body has made an unambiguous representation which was subsequently altered due to a policy change or more so as an administrative requirement. The petitioners were not given a hearing nor an opportunity of showing cause and therefore the procedure adopted was flawed and the Supreme Court held that the individual's legitimate expectation have been affected and that a violation of a fundamental right has taken place. In my view these two cases pertaining to procedural legitimate expectation has no application to the matter before us, as no allegation of a procedural legitimate expectation nor a violation of a fundamental right has been alleged. Therefore, the said cases can be clearly distinguished from the instant writ application in which a writ of mandamus was granted to effect payment of 'an unpaid balance of arrears of a salary revision' allegedly based upon substantive legitimate expectation.

The third case relied on by the Court of Appeal is **Multinational Property Development Ltd Vs Urban Development Authority 1996 (2) SLR 52**, a judgment of the Court of Appeal itself, wherein a decision to lease a land (Charmers Granary in Colombo) on a 99-year lease was subsequently cancelled. In this case the Court held a substantive change in policy resulting from a change in executive presidency cannot be avoided, but where a new policy is to be applied, the individuals who have legitimate expectation based on promises made by public bodies that they will be granted certain benefits, have a right to be heard before those benefits are taken away and directed to give the petitioner a hearing. No writ of mandamus was issued in this case and only a hearing was granted by the Court of Appeal. Thus, this case too can be distinguished from the appeal before us.

In the instant appeal, the respondents retired from service on 31.12.2002 under a voluntarily retirement scheme, after accepting and having obtained the compensation package referred to in the circular P5 as a full and final payment and after duly making a declaration to such effect and also that nothing further is due to them (vide 1R5 to 1R8) Therefore, by mutual agreement, the contract of employment between the CPC and the employees were terminated.

Eight months after the termination of the employment contract between the 1st appellant and the respondents, the cabinet memorandum (P17) referred to earlier was submitted to the Cabinet of Ministers for an increase of salaries (upon the basis that overtime work of employees will be curtailed to the minimum so that such increase will be set-off by such curtailment of overtime) and the increase being applicable only to the present employees and to those who have died or retired under normal circumstances on or after 01-05-2003, *excluding those who have retired under VRC*, which proposal was approved (P16) by the Cabinet of Ministers on 27-08-2003. This was the cabinet decision which their Lordships of the Court of Appeal refrained from quashing by way of a writ of certiorari. Nevertheless, it is observed that the Court of Appeal issued a writ of mandamus directing the appellants to make an unspecified payment to the respondents on the ground of substantive legitimate expectation. In issuing the writ of mandamus, the Court of Appeal held that CPC owed a statutory duty to the respondents to make such unspecified payment based upon the penultimate clause of circular P6 which reads thus "whatever allowances and salary which will fall due after the payment of salary in December 2002 will be paid in the future."

VRS was offered by circular P5, with specific reference to the compensation package and the last date of receipt of applications for VRS. Circular P6, covered incidental matters and referred to the statutory payments in detail which the employees opting for VRS would be entitled to and extended the time period of tendering application for VRS and opened it to employees who were earlier excluded and had the above referred clause as the penultimate clause.

When issuing the writ of mandamus, the reasoning of the Lordships of Court of Appeal was VRS (P6) was approved by the Cabinet of Ministers; under section 7(1) of the CPC Act the Minister can give general or special directions and the Board should give effect to such directions; the P6 circular has a statutory underpinning; the salary increase cannot be considered as seeking to enforce a contractual right and the employees have a legitimate expectation that the terms and conditions stipulated in P6 would be adhered to by the CPC.

Let me now consider the said reasoning. viz-a-viz the seven Questions of Law for which Special Leave was granted by this Court. In my view all Questions of Law weave around the availability of a writ of mandamus.

There was no material placed before this Court to substantiate that the VRS was approved by the Cabinet of Ministers on the request of the Minister, as stated in the judgment. The circular P5 by which the VRS was offered, issued under the hand of the Chairman/ Managing Director of CPC clearly stated that the VRS is offered by the Management with the concurrence of the General Treasury in view of the award of financial emoluments. Therefore, the attempt to sanctify the circular P5 to the level of a statutory duty of CPC, in my view has no merit and is erroneous. Similarity, circular P6 which covered incidental matters too was not issued as an exercise of power under section 7(1) of the CPC Act. The terms and conditions in the said circular does not have a statutory flavor or a statutory underpinning as stated in the judgement and on that ground too, the judgment is erroneous.

P5 is simply a circular issued in the course of contract of employment, by the employer offering a voluntarily retirement. The employees were free to accept or reject the VRS. P5 circular dated 15.10.2002 clearly spelt out the termination package, compensation to be calculated at two months salary for each year of service and one-month salary for balance years of service until the age of retirement and emoluments to be calculated upon the *last drawn salary*, i.e. salary of December 2002. This is the offer that was accepted by the 1500 employees as a full and final settlement and emoluments based on the last drawn salary. Vide 1R5 to 1R8 the respondents voluntarily accepted the compensation as a full and final settlement based upon the last drawn salary and terminated their contracts of employment and retired from service. Any dispute pertaining to the terms of VRS is contractual and does not fall within the scope of writ application. Thus, no relief can be granted by a writ court based upon legitimate expectation or otherwise.

The relationship between the CPC a public corporation and its employees is entirely contractual and has no statutory flavor. In a plethora of Appellate Court decisions, it has been held that matters pertaining to contracts of employment does not come within the realm of writ applications.

Sripavan J, (as he then was) in **Gawarammana Vs Tea Research Board and others 2003(3) SLR page 120** held that,

> "powers derived from contract are matters of private law. The fact that one of the parties to a contract is a public authority is not relevant since

> the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power."

Hence, on the ground of contractual relationship too, the judgment is erroneous.

The rationale for revising the salary is clearly and unambiguously spelt out in the cabinet paper P17 dated 23.08.2003 as overtime work of employees to be curtailed to a minimum, so that such increase will be set-off by such curtailment of overtime and the increase being applicable only to the present employees and to those who have died or retired under normal circumstance on or after 01.05.2003, excluding those who have retired under VRS. Thus, the intention of the CPC is very clear. Salary revision is only for present employees. In the facts and circumstances of the appeal, I do not see any merit or justification of the reasoning of the Court of Appeal, that the respondents had a substantive legitimate expectation to obtain unpaid salary arrears based only upon the penultimate paragraph in circular P6 which was issued subsequent to circular P5 by which the VRS was offered. In any event, the judgments the Court of Appeal relied on in respect of legitimate expectation and discussed in detail earlier, pertains to procedural legitimate expectation and not to substantive legitimate expectation.

The respondents in the petition filed before the Court of Appeal did not move to quash the decision of the Commissioner General of Labour referred to therein. Thus, there is no merit nor reason for the declaration by the Court of Appeal, that such decision is erroneous.

In Administrative Law by HWR Wade and C.F. Forsyth (11th Edition) at pages 450-452, the authors observe that,

> "The phrase legitimate expectation (which is much in vogue) must not be allowed to collapse into an inchoate justification for judicial intervention. (page 450)
>
> As Lord Bridge in 1986 set out clearly there are two ways in which legitimate expectations may be created. He said in Re. Westminster City Council [1986] AC 668 at 689, the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation. (page 451)
>
> It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made." (page 452)

When applying the above stated principles to the instant appeal the question that begs an answer is whether an assurance was given by CPC, if so whether such assurance given is clear, unequivocal or unambiguous, the only conclusion that could be arrived at is that it is not so and that no assurance what so ever was given by CPC. The penultimate paragraph in P6 is unspecified, equivocal, ambiguous, vague and not clear and thus will not create a legitimate expectation. It does

not fall into either of the two sub-headings of legitimate expectation, procedural or substantive. Therefore, the determination that the respondents had a substantive legitimate expectation and the issuance of a writ of mandamus to enforce such legitimate expectation by the Court of Appeal in my view has no merit and is erroneous.

In **Weligama Multipurpose Co-operative Society Ltd Vs Chandradasa Daluwatta (1984) 1 SLR 195**, a five judge bench of the Supreme Court, held that a writ of mandamus will not issue for a private purpose, that is to say for the enforcement of a mere duty stemming from a contract or otherwise. Sharvananda J (as he then was) at page 200, went onto say,

> "the Court of Appeal has over looked the fact that the authority relied on by the petitioner for the payment of salary to the interdicted officer is only a circular and not a regulation. A circular is not referable to the exercise of any delegated legislative power, it does not prescribe any duty having statutory potential."

Thus, based upon the above dicta, I am inclined to accept that in the instant appeal before us, an enforcement of a mere duty stemming from a contract of employment cannot be enforced by a writ of mandamus on the basis of either procedural or substantive legitimate expectation in the absence of any statutory duty on the appellant CPC. Therefore, the contention of the Court of Appeal is erroneous and has no justification.

The Lordships of the Court of Appeal, when granting the writ of mandamus relied on the dicta of Ameratunga J in the Court of Appeal case of **Karavita and others Vs Inspector General of Police and others 2002(2) at page 287** wherein it was stated,

> "the absence of precedent does not deter me when I am convinced that the only effective remedy to remedy the injustice caused to the petitioners is an order of mandamus."

However, I am mindful of the observations of the authors quoted above from Administrative Law by Wade and Forsyth, that legitimate expectation must not be allowed to collapse into an inchoate justification for judicial intervention.

In the judgment of the Supreme Court in **Credit Information Bureau of Sri Lanka Vs Messers Jafferjee and Jafferjee (Pvt) Ltd. 2005 (1) SLR page 89** Court set aside the judgment of the Court of Appeal which issued a writ of mandamus.

JAN de Silva J (as he then was) (with Sarath N Silva CJ and Weerasuriya J agreeing) referred to many conditions to be fulfilled prior to issuance of a writ of mandamus and I quote below from page 93.

> "There is rich and profuse case law on mandamus, on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be:
>
> a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought…… The foundation of mandamus is the existence of a legal right.
>
> b) The right to be enforced must be a "public right" and the duty sought to be enforced must be of a public nature…."

At page 94, JAN de Silva J went on to state,

> "Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided, not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. The court will not grant a mandamus to enforce a right not of a legal but purely equitable nature however extreme the inconvenience to which the applicant might be put."

I re-iterate the observations of JAN de Silva J, quoted above that the foundation of mandamus is the existence of a legal right. A court should not grant a writ of mandamus to enforce a right which is not legal and not based upon a public duty. Judicial intervention based upon legitimate expectation should not be used as a tool for enforcing a right purely of an equitable nature.

In the circumstances, in this instant appeal I do not find any merit or justification for judicial intervention for issuance of a writ of mandamus on the ground of substantive legitimate expectation by the Court of Appeal. For reasons adumbrated in this judgment, I hold that the Court of Appeal was in error in issuing a writ of mandamus.

Accordingly, all questions of law raised before this Court are answered in the affirmative. I allow the appeal of the Respondents-Petitioners (the Appellants) made to this Court. There will be no costs.

The judgment of the Court of Appeal dated 29.04.2010 is set aside and the petition filed by the Petitioners-Respondents in the Court of Appeal is also dismissed.

Appeal is allowed.

Judge of the Supreme Court

Sisira J de Abrew, J.

I agree

Judge of the Supreme Court

Vijith K. Malalgoda, PC. J.

I agree

Judge of the Supreme Court