

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

In the matter of an application for Special Leave  
to Appeal from a judgement of the Court of  
Appeal under Article 128 of the Constitution.

**SC Appeal No. 158/2010  
SC Special LA No. 165/10  
CA Application No. (Writ) 653/08**

1. Samastha Lanka Nidahas Grama Niladhari  
Sangamaya,  
No.10A, Nawagampura - Stage 2,  
Wallampitiya,  
Colombo 14.
2. Chandra Kayseen Jayasuriya, President,  
Samastha Lanka Nidahas Grama Niladhari  
Sangamaya,  
No.10A, Nawagampura - Stage 2,  
Wallampitiya, Colombo 14,  
residing at Ridiyagama Road,  
Galalethota, Ambalantota
3. R.M. Sirisena, Secretary  
Samastha Lanka Nidahas Grama Niladhari  
Sangamaya,  
No.10A, Nawagampura - Stage 2,  
Wallampitiya, Colombo 14,  
residing at Ihalawawa, Kiralogama

**PETITIONERS – APPELLANTS**

**-VS-**

1. D. Dissanayake  
Secretary,  
Public Administration and Ministry of  
Home Affairs,  
Torrington Square,  
Colombo 7.
2. Ms. P. Siriwardena  
Director General of Establishment,  
Ministry of Public Administration and  
Home Affairs,  
Torrington Square,  
Colombo 7.

**RESPONDENTS - RESPONDENTS**

<b>BEFORE</b>	:	S. Marsoof, PC, J P.A. Ratnayake, PC, J and C. Ekanayake J
<b>COUNSEL</b>	:	Dulindra Weerasuriya PC with Darshana Edirisinghe for the Petitioners - Appellants.
		Dr. Avanti Perera, SC for the Respondents - Respondents.
<b>ARGUED ON</b>	:	5.11.2012
<b>WRITTEN SUBMISSIONS ON</b>	:	5.12.2012
<b>DECIDED ON</b>	:	14.06.2013

### **SALEEM MARSOOF J.**

The primary question that arises for determination in this appeal is whether the 1<sup>st</sup> Respondent-Respondent (hereinafter referred to as the “1<sup>st</sup> Respondent”) had the authority to amend Public Administration Circular No.06/2006 dated 25<sup>th</sup> April 2006 (P5), which was issued by the 1<sup>st</sup> Respondent to implement a policy decision relating to the public service, by issuing the amending circular designated as Public Administration Circular No. 06/2006(1) dated 24<sup>th</sup> May 2006 (1R3).

It may be useful at the outset to mention that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners - Appellants (hereinafter referred to as the “Appellants”) are respectively, a trade union of Grama Niladharis, and its incumbent President and Secretary. The members of the 1st Appellant’s trade union belong to the Grama Nildhari Service, which is an all-island service. The 1<sup>st</sup> Respondent is the Secretary to the Ministry of Public Administration and Home Affairs who is the appointing authority and the final disciplinary authority of all Grama Nildharis. The 2<sup>nd</sup> Respondent is the Director General of Establishment, who was responsible for formulating draft schemes for the recruitment, appointment and promotions of Grama Niladhari officers, subject to the oversight of the Cabinet of Ministers.

The Appellants filed an application seeking a writ of *mandamus* on the Respondents directing them to place Grama Niladharis - Class II on the Salary Code MN-1-2006, as laid down in Public Administration Circular No. 06/2006 dated 25<sup>th</sup> April 2006 (P5) titled ‘Restructuring Of Public Service Salaries Based On Budget Proposals - 2006’. The said circular contains the revised salary structure formulated to give effect to the Budget Speech 2006, after its approval in Parliament. They have in this petition to the Court of Appeal submitted that they have been placed on a lower salary scale by Circular No. 06/2006(1) (1R3) issued by the 1<sup>st</sup> Respondent and the letter dated 6<sup>th</sup> November 2008(1R4) sent by the Secretary to the National Salaries and Cadres Commission, which sought to give effect to the said Circular.

The Court of Appeal, in the impugned judgement pronounced on 25<sup>th</sup> April 2006, had considered certain prior decisions of that court and proceeded to dismiss the application filed by the Appellants on the basis that it would not review policy decisions made by the Government. However, on 29<sup>th</sup> November 2010 when this Court granted special leave to appeal against the impugned judgement of the Court of Appeal, this Court confined the matters to be considered on appeal to the following substantial questions:-

1. Did the 1<sup>st</sup> Respondent have the authority to amend by 1R3, the Circular marked P5, which is allegedly a policy decision made by the Cabinet of Ministers?
2. If the answer to question (1) is in the negative, are the Appellants entitled to the salary scale set out in P5?

#### *The Question of Vires*

The first substantive question that has to be determined on appeal in this case is purely one of *vires*, and arises in the context of certain constitutional provisions which seek to distinguish between two categories of decisions that can be made by the executive arm of Government. The first of these are decisions relating to “the appointment, transfer, dismissal and disciplinary control” of public officers, which was vested in the Public Service Commission by Article 55(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as “the Constitution of Sri Lanka”) as amended by the Seventeenth Amendment thereto, which was in force at the time of the pronouncement of the impugned judgement of the Court of Appeal. The second of these categories are decisions pertaining to policy, which in the context of the public service were exclusively vested in the Cabinet of Ministers by Article 55(4) of the Constitution of Sri Lanka, as amended by the Seventeenth Amendment. Since the Circular marked 1R3 was issued, and the letter marked 1R4 was sent, prior to the coming into force of the Eighteenth Amendment to the Constitution, the provisions of the said Amendment need not be considered in deciding this appeal.

There can be no doubt that the Cabinet of Ministers has the power to make important policy decisions relating to the public service. Article 55(4) of the Constitution of Sri Lanka provided that, subject to the other provisions of the Constitution, “the cabinet of Ministers shall provide for and determine all matters relating to public officers, including the formulation of schemes of recruitment and codes of conduct for public officers, the principles to be followed in making promotions and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of public officers”. The Seventeenth Amendment to the Constitution, which was in force at the time the impugned judgement was pronounced, has replaced Article 55(4) with an even simpler and more precise provision, which enacts as follows:-

“Subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers”.

At the hearing of this appeal, learned President’s Counsel for the Appellants submitted that the Circular bearing No. 06/2006 (P5) was made on the recommendations of the National Salaries and Cadres Commission, and once accepted and approved by the Cabinet of Ministers, it became a policy decision of the Government. He further submitted that while 1R3 is a Circular issued by the 1<sup>st</sup> Respondent with respect to matters of policy, such a circular could only be issued with the approval of the Cabinet of

Ministers, which has exclusive authority to set out the policy with respect to public officers. He contended that insofar as 1R3 is a circular issued by the 1<sup>st</sup> Respondent without the approval of the Cabinet of Ministers, it is a nullity, and hence the salary structure and scales set out in P5 cannot be varied by another inferior authority. For the same reason, he also contended that the letter dated 6<sup>th</sup> November 2008 sent by the Secretary to the National Salaries and Cadres Commission marked 1R4 is also of no force or avail in law. The essence of the Appellants' case is that 1R3 and 1R4 are invalid because, unlike P5, which had been issued by the Secretary to the Ministry of Public Administration "with the sanction of the Cabinet of Ministers", 1R3 and 1R4 did not have the sanction of the Cabinet of Ministers.

Learned State Counsel, responded to these submissions by pointing out that there is nothing in Circular No. 06/2006 (P5) which establishes that it had been approved by the Cabinet of Ministers, as it only states at its very commencement that "*The Government* has decided to implement a new salary structure prepared on a monthly basis given in Annexure I with effect from 01/01/2006 as stated in the Budget Speech 2006" (*Emphasis added*). Learned State Counsel stressed that the reference to "*the Government*" in P5 was not sufficient to establish that it had received the sanction of the Cabinet of Ministers, and submitted that in the absence of any specific statement in P5 or any external evidence to show that Circular P5 had received the sanction of the Cabinet of Ministers, there can be no legal requirement for amendments thereto, such as Circular 1R3, to be approved by the Cabinet of Ministers.

The Appellants who were seeking to persuade Court that Circular P5 had been sanctioned by the Cabinet of Ministers prior to it being issued, had not supported this position with any material produced with their petition and affidavits lodged in the Court of Appeal or in this Court, nor have the Respondents furnished with their affidavits any evidence of such approval. This Court only had the benefit of examining the Note to the Cabinet of Ministers captioned "Salaries and Other Incentives Proposed by the Budget of 2006" (2006 අයවැය මගින් යෝජන කරන ලද වැටුප් හා අනෙකුත් දිරිගණකීම) (R1) bearing No. 06/0043/207/002 dated 4<sup>th</sup> January 2006 presented under the hand of the Hon. Minister of Finance and Planning (R1) and the relevant Cabinet Decision of the same date (R2) pertaining thereto. The latter document shows that the Note to the Cabinet was noted by the Cabinet of Ministers at its meeting of 4<sup>th</sup> January 2006. Paragraph 2.1 of the aforesaid Note to the Cabinet of Ministers (R1) provides as follows:-

2.1. රජයේ යෝජනයේ සඳහා පහත සඳහන් ප්‍රතිලාභ හිමවේ.

- සියලුම රජයේ යෝජනයේ වැටුප් ඉහළ දැමීමේ.
- රජයේ යෝජයේ අවම මාසික වැටුප රු 11,630/- ක් වනු ඇත. ඒ අනුව රු 2,280/- ක මාසික වැඩිවිමක හිමවනු ඇත. එම සම්පූර්ණ වැටුප වැඩිවිම කොටස් දෙකකින් බඩා දේ. සම්පූර්ණ වැඩිවිමන් 50% ක 2006.01.01 දින සිට ද ඉතිරිය 2007.01.01 දින සිට ද හිමවේ. (වැටුප වැඩිවන ආකාරය ඇමුණුම 1 යටතේ දක්වා ඇත.) 2005 වර්ෂයේ අයවැය මගින් යෝජන කරන ලදා වර්ෂයේ ගෙවීම නියමනව නිඩු ඉනිට ගෙෂය ද මෙයට ඇතුළත් වේ.....

It is evident from the aforesaid Note to the Cabinet of Ministers that Circular P5 was the outcome of one of the salutary proposals contained in the Budget Speech - 2006, which was to fix a minimum salary scale of Rs. 11,630/- for the entire public service. It appears from this Note that the Budget Speech – 2006 only contained certain general proposals for the enhancement of salaries and emoluments applicable to the public sector, and the function of formulating the mundane details and suitably restructuring all public sector salary scales fell on the Ministry of Finance and Planning, which acted in consultation with other relevant Ministries and the National Council for Administration. Even what was placed before the Cabinet

of Ministers by the said Note and duly noted by the Cabinet of Ministers at its meeting of 4<sup>th</sup> January 2006, were some general formulations and not the detailed provisions of Circular P5. There is no material placed before Court, which clearly establish that the Circular P5, in the form in which it was issued by the 1<sup>st</sup> Respondent, was in fact placed before the Cabinet of Ministers or received its approval.

However, it is of particular significance to note that the aforesaid Note to the Cabinet expressly provided as follows in paragraph 7 thereof:-

07. මෙම වැටුප් වනුලේඛනය මගින් ආවරණය නොවන වෙනත් සේවක පිටිස් සම්බන්ධයෙන් වන ඉල්ලම සහ වැටුප් තුම තුම් මතුවන වෙනත් ගැටුව වෙනම පරිපාලනය සඳහා වන ප්‍රතික සහාය ඒ පිළිබඳව සලකා බලනු ඇත.

It would appear from the above quoted paragraph of the aforesaid Note to the Cabinet of Ministers (R1) that the executive arm of government, which had the responsibility of implementing the Budget Proposals – 2006, was obliged to refer any of the problems that could arise in the process of the implementation of the said proposals for the consideration of the National Council for Administration, which has since been replaced by the National Salaries and Cadres Commission. It is also evident from the letter dated 6<sup>th</sup> November 2008 (1R4) addressed to the 1<sup>st</sup> Respondent by the Secretary to the said Commission is a clarification issued to clarify certain matters that arose from the implementation of Public Administration Circular No. 06/2006(1) dated 24<sup>th</sup> May 2006 (1R3).

On the basis of the material placed before this Court, I am inclined to the view that neither the Circular dated 24<sup>th</sup> May 2006 (1R3) nor the clarification made by the National Salaries and Cadres Commission by the letter dated 6<sup>th</sup> November 2008 addressed to the 1<sup>st</sup> Respondent (1R4), purported to evolve or deal with matters of pure policy pertaining to the public service, and that they merely reflect action taken by the executive arm of government to implement the clear policy of restructuring public sector salary scales to give effect to the salutary proposal contained in the Budget Speech – 2006, which was to raise the minimum salary scale in the public sector to Rs. 11,630/- . In the result, I am of the opinion that substantive question (1) on which special leave to appeal had been granted in this case has to be answered in the affirmative.

#### *Entitlement of the Petitioners to the Salary Scales set out in P1*

By reason of the fact that I have answered the first substantive question that arose for decision in this appeal in the affirmative, the second substantive question on which special leave to appeal was granted by this Court need not be answered. Therefore, without going into the question in any depth, I would like to add that I see a formidable obstacle to the grant of any relief to the Appellants even if they were otherwise entitled to any relief, as in their prayer to the petition lodged by them in the Court of Appeal, they have not sought a mandate in the nature of *certiorari* to quash Public Administration Circular No. 06/2006(1) dated 24<sup>th</sup> May 2006 issued by the 1<sup>st</sup> Respondent (1R3) and the clarification made by the National Salaries and Cadres Commission by its letter dated 6<sup>th</sup> November 2008 addressed to the 1<sup>st</sup> Respondent (1R4).

It is trite law that no court will issue a mandate in the nature of writ of *certiorari* or *mandamus* where to do so would be vexatious or futile. See, *P.S. Bus Company Ltd., v Members and Secretary of Ceylon Transport Board* 61 NLR 491, *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt)*

*Ltd.*, 2005 (1) Sri LR 89. The writ of *mandamus* is issued to enforce a public duty, and the writ was sought in this case by the Appellants directing the Respondents to pay to them the salary scales set out in Public Administration Circular No.06/2006 dated 25<sup>th</sup> April 2006 (P5). However, I fail to see how the Appellants could have succeeded in their prayer for a mandate in the nature of *mandamus* without having 1R3, which is a purported amendment to P5, and 1R4, which is a clarification issued by the Salaries and Cadres Commission based on the amendment 1R3, quashed through *certiorari*, a relief which they have failed to pray for in the lower court.

In these circumstances, I am constrained to hold that in any event, substantive question (2) on which special leave to appeal had been granted to the Appellants has also to be answered against the Appellants, but this time in the negative.

*Conclusions*

For all these reasons, I am of the opinion that the judgement of the Court of Appeal should stand, and this appeal should stand dismissed. In all the circumstances of this case, I do not make any order for costs.

**JUDGE OF THE SUPREME COURT**

**P.A. RATNAYAKE, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**C. EKANAYAKE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**