

1978 Present: Wimalaratne, J., Wijesundera J. and
Sharvananda, J.

G. M. C. PERERA and THREE OTHERS, Petitioners
and
R. ABEYRATNE, Respondent
S. C. Application 543/77

Writs of Certiorari and Mandamus—Application to quash order of refusal to pay pension to widow—Mandamus sought to direct payment to her in terms of Regulations—Whether judicial or quasi-judicial order—Failure of deceased to contribute to Pension Fund—Whether duty fell on respondent to pay pension—Local Government Service Widows' and Orphans' Pension Fund Regulations, 1952, Rules 4, 7, 10, 11, 12 and 15—Local Government Service Law, No. 16 of 1974, section 24(2)—Do the Writs lie?

The husband of the petitioner was an employee of the Colombo Municipal Council and held a post which was declared pensionable by the Pension Rules. The Local Government Service Widows' and Orphans' Pension Fund Regulations, 1952, which were kept in force by section 24 (2) (a) of Law No. 16 of 1974, provided that such

persons shall become contributors to the Pension Fund from the date on which they commenced to hold such office. Rule 12 (1) required that every such person should give certain particulars regarding his name, date of birth, etc., to the Local Government Service Commission and thereafter the Commissioner, Municipal Council was required to check these particulars and certify that the officer was entitled to join the Fund (Regulation 10 (1)). Since the deceased husband of the petitioner had not made such notification, the Commissioner had not certified that he was entitled to join the Pension Fund and no contribution was deducted monthly from his salary as provided for by Regulation 15.

After his death his widow, the petitioner, applied to the Director, Local Government Service Department (the respondent) to be paid her pension but the respondent refused. The petitioner thereafter made the present application for the issue of a Writ of Certiorari to quash the said order of refusal and a Writ of Mandamus to direct the respondent to pay her pension in terms of the Regulations above referred to.

Held: (1) That the order of refusal made by the respondent was not a judicial or quasi-judicial order but only an administrative order and no Writ of Certiorari lies.

(2) That the statutory duty falling on the respondent to pay pensions to the widows of deceased employees out of the Local Government Service Widows' and Orphans' Pension Fund did not extend to the payment of such pension to the widows of those who did not come within the category of contributor to the said fund. No Writ of Mandamus can issue to compel the respondent to pay a pension which is not authorised in law.

APPPLICATION for Writs of Mandamus and/or Certiorari.

Prins Gunasekera, for the petitioners.

K. M. M. B. Kulatunga, Acting Solicitor-General, with *S. Ratnapala*, State Counsel, for the State.

Cur. adv. vult.

March 3, 1978. SHARVANANDA, J.

The applicant is the widow of the late Sylvester Perera, who was a Grade I Fitter attached to the Workshop Department of the Colombo Municipal Council. The applicant's husband had commenced in 1944 to serve the Colombo Municipality as a Welder. On 1.4.55, he was promoted to Grade II, Labour Class. On 7.7.68, he was promoted as Grade I Fitter, the holder of which post was declared pensionable by the Local Government Service Pension Rules. He died on or about 7th July, 1975, while in that service.

Rule 10 1 (a) of the Local Government Service Widows' and Orphans' Pension Fund Regulations, 1952, provides that every person who, having entered service after the appointed date, viz. 1.8.51, holds a pensionable office shall become a contributor to the Local Government Service Widows' and Orphans' Pension

Fund from the date on which he commenced to hold such office and thus it became obligatory on the said Sylvester Perera to become a contributor to the said Fund from 7.7.68.

Rule 11 of the Regulations required the Local Government Service Commission to keep and maintain registers in which should be entered the date of birth of every contributor and every wife and child who may become entitled to a pension under this Rule and the particulars of all contributions paid to the Fund by a contributor and the Commission and the pension for the time being payable under the Regulations in respect of each contributor in the event of his death and/or other dates and particulars relating to the contributor and his family as may be required for the purpose of the Regulations.

Section 12(1) of the Regulations provides as follows:—

“Every contributor shall, within three months of the date on which he becomes a contributor, notify to the Commission on a form approved by it the following particulars:

- (a) The name in full.
- (b) The date of his birth.
- (c) The date from which he is liable to contribute to the Fund.
- (d) If he is married, the date of his marriage and the maiden name of his wife in full and the date of her birth; and
- (e) If he has any child or children, the sex, names in full and the date of birth of such child or children.”

The late Sylvester Perera failed to notify the Commission the particulars required by the aforesaid Regulation 12(1). Counsel for the applicant submitted that it was part of the administrative duty cast on the Municipal Council to have got the necessary declaration from the deceased employee and that the Council had failed in its duty to call upon the deceased to make the declaration. The language of Regulation 12(1) however casts the responsibility for making the required notification on the contributor within three months of his becoming a contributor, whether called upon by the Council or not.

The form referred to in Regulation 12(1) provides for the Commissioner, Municipal Council, to certify to the Accountant, Local Government Service Commission. “that the date of birth of the officer has been checked with his certificate of birth/

affidavit and found to be correct. The officer is entitled to join the Local Government Service Widows' and Orphans' Pension Fund under Regulation 10(1) (a) with effect from....." To enable the Commissioner, Municipal Council, to issue the aforesaid certificate, the officer concerned should have supplied the necessary particulars. It was only after the Commissioner had checked and found correct the date of birth of the officer that he could certify that the officer was entitled to join the Local Government Service Widows' and Orphans' Pension Fund under Regulation 10(1). Since the deceased employee had failed to make the necessary notification in terms of Regulation 12(1), the Commissioner, Municipal Council, did not certify to the Accountant, Local Government Service Commission, that the deceased was entitled to join the Local Government Service Widows' and Orphans' Pension Fund, and hence the contribution payable under Regulation 15 was not deducted monthly from the salary of the contributor; and the unfortunate consequence was that the deceased employee failed to make any contribution, as required by the Regulation, to the Local Government Service Widows' and Orphans' Pension Fund during his life time. Thus, the deceased, though he was entitled to be a contributor to the Local Government Service Widows' and Orphans' Pension Fund, did not, in fact, exercise the privilege of becoming a contributor to the Fund, as he did not make any contribution to the Fund.

Regulation 4 provides that all contributions made under the Regulation by the contributors and by the Commission and all interests and investments shall be paid into the Fund; and Regulation 7 states: "All pensions, repayments of contribution, etc. shall be paid out of the Fund". Regulation 28 specifies who the beneficiaries of a contributor are; and Regulation 29 states: "On the death of a contributor, the beneficiary of the contributor shall receive a pension in accordance with the provisions of the Regulation". The widow of a contributor is, in terms of the Regulations, a beneficiary who is entitled to receive a pension in accordance with the Pensions Scheme provided in the Regulations.

On the death of the aforesaid deceased employee Sylvester Perera, the applicant, who is his widow, applied to the respondent, the Director, Local Government Service Department, to be paid her pension from the Local Government Service Widows' and Orphans' Pension Fund as widow of the deceased employee Sylvester Perera. Since the respondent refused to accede to the applicant's request, the applicant has filed this application for

the issue of a Writ of Certiorari and/or Mandamus quashing the order or refusal made by the respondent and to direct him to pay her pension in terms of the Local Government Service Widows' and Orphans' Pension Fund Regulations.

Since the order of refusal made by the respondent, which is sought to be quashed by a Writ of Certiorari, is not a judicial or a quasi-judicial order but is only an administrative order, no Writ of Certiorari lies, in law, to quash such administrative orders.

The Local Government Service Widows' and Orphans' Pension Fund for the payment of pensions to the widows and children of the pensionable members of the Local Government Service which was established in terms of the Local Government Service Widows' and Orphans' Pension Fund Regulations, 1952 (vide Vol. V, Subsidiary Enactments at page 468) is now administered by the respondent, the Director, Local Government Service Department (sections 16, 17 and 18 of the Local Government Service Law No. 16 of 1974), and notwithstanding the repeal of the Local Government Service Ordinance (Chap. 264) and the Local Government Service Act, No. 18 of 1969, the aforesaid Regulations of 1952 have been kept alive in terms of section 24(2) (a) of the Law No. 16 of 1974 and the said Regulations continue to govern the administration of the Pensions Scheme provided by the said Regulations.

Under the aforesaid Pensions Scheme, the quantum of pension payable to the beneficiary of a contributor is computed on the basis of the contribution made by the deceased. To become entitled to the benefits of the Scheme by a widow, it is fundamental that the deceased should, in fact, have been a contributor to the Fund, in the sense that he, in fact, made contributions to the Fund. In this case, it is admitted that the applicant's husband had overlooked making and never made any contributions. He drew his full salary without any deduction, made on account of contributions to the Local Government Service Widows' and Orphans' Pension Fund, from his monthly salary. Since the deceased has thus failed to be a contributor, the applicant cannot claim the status and benefits of being the widow of a contributor. The statutory duty falling on the respondent to pay pensions to the widows of the deceased employees out of the Local Government Service Widows' and Orphans' Pension Fund does not extend to the payment of such pension to the widows of deceased employees who, for whatever reason, did not come within the category of contributor to the said Fund

and hence no Writ of Mandamus can issue from this Court to compel the respondent to pay a pension which is not authorised in law.

The application, therefore, fails and is dismissed, in the circumstances, without costs.

WIMALARATNE, J.—I agree.

WIJESUNDERA, J.—I agree.

Application dismissed.

