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

In the matter of an Application for Mandate in the Nature of a *Writ of Certiorari* under and in terms of Article 140 of the Constitution of The Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application
No.125 / 2016

1. Ceylon Electricity Board,
   No.50, Sir Chittampalam A.Gardiner Mawatha
   P.O. Box 540
   Colombo 02.

PETITIONER

Vs.

1. Hon. W.D. Seneviratne
   Minister of Labour,
   Ministry of Labour,
   Labour Secretariat,
   Colombo 05.

2. Hon. Athauda Seneviratne,
   Former Minister of Labour,
   Ministry of Labour,
   Labour Secretariat,
   Colombo 05.

3. M.D.C. Amarathunga,
   Commissioner General of Labour,
   Department of Labour,
   Labour Secretariat,
   Colombo 05.

4. K.M. Sarathchandra,
   No. 53/2, Nawala Road,
   Nugegoda.

5. D.M.J. Kumarasiri,
   No. 74/2A, Kaladuwa Road,
   Negombo.

6. Y. W. Piyadasa,
   No. 93/7, Gonahena,
   Weboda.

7. S. Waniganeththi,
   No. 176/1, Welegedra,
   Attanagalle.

RESPONDENTS

Before: **Dhammika Ganepola, J.**
Adithya Patabendige, J.

Counsel: Uditha Egalahewa, P.C. with Ranga Dayananda for the Petitioner.
Prabhashanee Jayasekara, S.C. for the 1st and 3rd Respondents.
Sanath Weerasinghe with Jayalath Hisella for the 5th, 6th and 7th Respondents.

Judgment on Written submissions
Decided on: 1.10.2025.

Adithya Patabendige, J.

The Petitioner, Ceylon Electricity Board (hereinafter referred to as the Petitioner Board), filed this application seeking *inter alia* a mandate in the nature of a *writ of certiorari* to quash the Order of the 4th Respondent dated 15th of August 2015, which was published in the Government Gazette No. 1944/21 dated 07.12.2015.

Mr. D.M.J. Kumarasiri, the 5th Respondent, had been appointed by the Petitioner Board as a 'Training Officer' at the age of 40, with effect from 5th of October 1987 and retired from his service on 2nd April 2007.

Mr. Y.W. Piyadasa, the 6th Respondent, had been appointed as an 'Accountant' at the age of 40, with effect from 01st of January 1985 and retired from his service on 23rd September 2004.

Mr. S. Waniganeththi, the 7th Respondent had been appointed as an 'Accountant' at the age of 42, with effect from 5th of June 1989 and retired on 25th April 2007.

The Pension Fund of the Petitioner Board (hereinafter referred to as the Pension Fund) was established in terms of **Section 12(j) of the Ceylon Electricity Board Act No.17 of 1969.** The rules applicable to the Pension Fund were gazetted in Government Gazette No. 1321/18 dated 31st December 2003. These rules were made by the Minister of Power and Energy in terms of Section 56 of the **Ceylon Electricity Board Act.** The document marked as 'A1' contains the rules of the Pension Fund.

It is not in dispute that by the time 5th to 7th Respondents retired at the age of 60, they had completed 233 months, 236 months, and 214 months of service respectively. Therefore, the 5th, 6th, and 7th Respondents had not been given the pension benefits by the Petitioner Board as they had not completed the required 240 months of service at the time of their retirement.

Thereafter, the 5th to 7th Respondents lodged a complaint with the 3rd Respondent, the Commissioner General of Labour about the deprivation of their pension rights. Accordingly, the 3rd Respondent had sought the intervention of the 2nd Respondent, Minister of Labour. Then, the 2nd Respondent had referred this dispute for arbitration in terms of **Section 4(1) of the Industrial Disputes Act** and appointed the 4th Respondent as the Arbitrator.

The 4th Respondent, after the arbitration proceedings, awarded the pension rights of the 5th, 6th, and 7th Respondents on 15th August 2015, and it had been gazetted in the Government Gazette No. 1944/21 dated 07.12.2015.

Being aggrieved by the said award of the 4th Respondent, the Petitioner Board has invoked the jurisdiction of this Court.

It is to be noted that the 5th to 7th Respondents filed a joint affidavit stating that the Petitioner Board had previously granted pension rights to certain officers who had not completed the required 240 months of service. On this basis, they claimed that they were entitled to similar pension rights. Most importantly, the Respondents raised a preliminary objection regarding the alleged delay on the part of the Petitioner Board in invoking the writ jurisdiction of this Court.

It is a common ground that the 5th to 7th Respondents retired without completing the period of 240 months. It is also a common ground that certain employees were awarded pension benefits by the Petitioner Board even without completing the period of 240 months and the Petitioner Board had considered the service after the retirement of them.

In view of the Order of the Arbitrator dated 15.08.2015, it is abundantly clear that the Arbitrator decided to award pension rights to the 5th to 7th Respondents merely because of a prior decision by the Petitioner Board to grant pension benefits to certain employees who had not completed 240 months of service. For ease of reference, I draw the attention to the paragraph "v" and "vi" of the conclusions of the award of the Arbitrator as follows:

(v) I do not see any fairness that the respondent has made adjustments to pension rules in order to grant retirement benefits only to selected few who has not qualified according the said rules.

(vi) I am in a view that it is not just and equitable to deprive pension benefits to employees who have worked many years merely because they are short of merely few months to complete mandatory 240 months of service at the time of retirement.

Considering the above, it is clear that the Arbitrator had believed that the Petitioner Board would have acted in favour of the 5th to 7th Respondents by granting them pension rights, since the Petitioner Board had previously done so for certain other employees in similar situations.

However, according to Rule 22.1 of the Pension Fund, to be eligible for pension benefits, an employee must have completed a minimum of 240 months of service at the time of retirement. When counting the period of 240 months, in terms of Rule 22.7, a period of service after the point of retirement cannot be considered.

Therefore, according to the above rules, even the Petitioner Board has no power to grant Pension rights to employees who have not fulfilled the required criteria.

It is observed that when these pension rules were established, the 5th to 7th Respondents should have known that they were not eligible for pension rights. Consequently, they cannot rely on any legitimate expectation of receiving such benefits. On the other hand, the fact that the Petitioner Board previously made an unlawful decision to grant pension rights to other unqualified employees, does not create a legitimate expectation for anyone else to claim the same unlawful benefit.

When this application was taken up for argument, the learned President's Counsel appearing for the Petitioner brought to the notice of this Court that the Supreme Court had decided in favour of the Petitioner in an identical case bearing No. **SC/Appeal/0167/14,** ***Ceylon Electricity Board v. Hon. Athauda Seneviratne and Others*** decided on 23.05.2025. In this case, the facts are almost similar to this application, the Supreme Court decided that the Arbitrator's award was contrary to law.

His Lordship E.A.G.R. Amarasekara in the said judgment stated as follows:
"As explained above, there is an illegality in the previous decisions of the Appellant Board to adjust, relax or circumvent the pension regulations to grant pension rights to some of the employees as they were made in contravention of the said regulations. Thus, they are ultra vires decisions. Any right to equal treatment or a legitimate expectation cannot spring from them."

It must also be emphasized that the Pension Fund is non-contributory from the perspective of the employees. Rule 3(1) makes it clear that only the Board remits 7% of the total salaries into the Pension Fund. Therefore, the Respondents cannot claim any legal right to pension merely by reason of such remittances. The pension benefit is purely a statutory creation and subject strictly to the qualifying criteria stipulated in the Pension Fund rules.

Rule 3(1) of the Pension Fund states as follows:

"Commencing from the month of January 1994, the Board shall remit monthly to the Pension Fund a sum of money equivalent to 7% of the total of salaries of all the employees computed on the aggregate salary on which contributions are made to the Provident Fund."

Considering the legal effect and the force of law of the rules of the Pension Fund, ***His Lordship E.A.G.R. Amarasekara*** in the above judgment stated as follows.

"In terms of ***Section 56 of the Ceylon Electricity Board Act,*** *every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of the publication or upon such later date as may be specified. Every such regulation has to be placed before the Parliament for approval. Every such regulation deemed to be rescinded as from the date of disapproval by the Parliament but without prejudiced to anything previously done thereunder. Any person who contravenes the provisions of any regulation made under the Act shall be guilty of an offence punishable by a Magistrate."*

Another aspect that needs to be emphasized is the impact on public finance and sustainability of the Pension Fund. If employees who have not satisfied the qualifying criteria are granted pension rights, it would impose an unauthorized financial liability on the Pension Fund and, indirectly, on the public money. Permitting such unlawful grants would erode the financial stability of the Pension Fund and amount to the malpractices of the Board.

Hence, my considered view is that the decision of the Arbitrator to grant pension rights to the 5th to 7th Respondents without completing the required 240 months of service cannot be sustained, as it is contrary to the law and *ultra vires.*

The Respondents, in their joint affidavit, have asserted that the application of the Petitioner should be rejected on the grounds of undue delay and misrepresentation of facts. It is true that the remedies under judicial review cannot be invoked by those who are guilty of laches, misrepresentation and suppression of material facts. Likewise, the fact that the question of inordinate delay does not arise, where there is a blatant violation of the law or unless there are extraordinary reasons to justify such a delay. However, as I mentioned earlier, the award of the Arbitrator is manifestly erroneous in light of the rules of the Pension Fund. In such

circumstances, the court is reluctant to allow public authorities to continue their unlawful practices simply because of a delay in filing the application. Therefore, with regard to the preliminary objection relating to the alleged delay, it is my considered view that no substantial prejudice has been caused to the Respondents by considering the date of filing of this application.

In the case of ***Biso Menka v Cyril de Alwis (1982) 1 S L R 368 at page 369 Justice Sharvananda*** held thus:

"When the Court has examined the record and is satisfied the Order complained of manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify the rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically."

For the foregoing reasons and the circumstances of this application, I hold that the impugned arbitral award dated 15.08.2015 and published in Gazette No. 1944/21 of 07.12.2015 is unlawful and *ultra vires*.

In the said circumstances, this Court proceeds to issue a *Writ of Certiorari* in terms of paragraph (b) of the prayer of the petition, quashing the aforementioned arbitral award. Accordingly, the application of the Petitioner is allowed.

I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL