

**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.*

T. M. Lankage
No. 303, Angala Gedera
Walpita.

CA (Writ) App. No. 78/2024

PETITIONER

Vs.

1. Mr. Chaminda Hettiarachchi,
Director General of Pensions
Department of Pensions
Maligawatte Secretariat,
Maligawatte,
Colombo 10.
2. Mrs. A.A.D.S. Athapaththu,
Senior Assistant Secretary,
Department of Pensions,
Maligawatte Secretariat, Maligawatte,
Colombo 10.
3. S. C. Jagath,
Director General,

Department of Technical Education and
Training,
Olcott Mawatha, Colombo 10.

4. Pradeep Yasarathna,
Secretary,
Ministry of Public Administration and
Home Affairs,
Provincial Councils and Local
Government,
Independent Square,
Colombo 07.

4A. S. Alokabandara,
Secretary,
Ministry of Public Administration and
Home Affairs,
Provincial Councils and Local
Government,
Independent Square,
Colombo 07.

5A. A.H.M.H. Abayarathna,
Ministry of Public Administration,
Home Affairs,
Provincial Council and Local
Government.

6A. Hon. Bimal Rathnayaka,
Minister of Transport Highways, Ports,
and Civil Aviation.

7A. Hon. K.D. Lalkantha,
Ministry of Agriculture, Life stock
Land and Irrigation.

8A. Hon. Ramalingam Chandrasekar,
Ministry of Fisheries, Aquatic and
Ocean Resources.

9A. Hon. Harini Amarasooriya,

Ministry of Education, Higher
Education and Vocational Education.

- 10A. Hon. Sunil Handunnetti,
Ministry of Industry and
Entrepreneurship.
- 11A. Hon. Dammika Patabendi,
Ministry of Environment.
- 12A. Hon. Samantha Viddyaratna,
Minister of Plantation and
Community Infrastructure.
- 13A. Hon. Harshana Nanayakkara,
Minister of Justice and National
Integration.
- 14A. Hon. Vijitha Herath,
Ministry of Foreign Affairs, Foreign
Employment and Tourism.
- 15A. Hon. Nalinda Jayathissa,
Minister of Health and Mass Media.
- 16A. Hon. Anura Karunathilake,
Ministry of Urban Development,
Construction & Housing.
- 17A. Hon. Chrishantha Abeysena,
Ministry of Science and Technology.
- 18A. Hon. Hiniduma Sunil Senevi,
Minister of Buddhassasana, Religious
& Cultural Affairs.
- 19A. Hon. Kumara Jayakody,
Minister of Energy.
- 20A. Hon. Anil Jayantha Fernando,
Minister of Labour.
- 21A. Hon. K.M. Ananda Wijepala,

Minister of Public Security &
Parliamentary Affairs.

22A. Hon. Wasantha Samarasinghe,
Minister of Trade, Commerce Food
Security & Corporate Development.

23A. Hon. Saroja Savithri Paulraj,
Minister of Women and Child
Affairs.

23AA. Hon. Upali Pannillage,
Minister of Rural Development Social
Security and Community
Empowerment.

24A. His Excellency Anura Kumara
Dissanayake,
In the capacity of
Minister of Defense,
Minister of Finance, Planting and
Economic Development,
Minister of Digital Economy.

Through
Hon. Attorney General, Attorney
General's Department, Colombo 12.

25A. W.M.D.J. Fernando,
Secretary to the Cabinet,
Loyds Building, Sir Baron Jayathilaka
Mawatha, Colombo 01.

26. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

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

Counsel:

Ershan Ariyaratnam for the Petitioner.

Nayomi Kahawita, S.S.C. for the Respondents.

Argued on: 08.12.2025

Delivered on: 17.03.2026

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

Judgement

Introduction

The Petitioner had joined the Department of Technological Education and Training as a Lecturer in Class III of the Technical Education Service in 1988. Thereafter, he was promoted to Class II in 1993. In the meantime, in 1997, consequent to a Cabinet decision, the Department of Technological Education and Training was absorbed into the Sri Lanka Institute of Advanced Technological Education; the said Cabinet decision is contained in the document marked as **X3**, and the document relating to such absorption is in the document marked as **X4**. According to the document marked as **X4**, the Petitioner is entitled to pension and to the benefits of the Employees' Trust Fund (hereinafter referred as 'ETF') and the Employees' Provident Fund (hereinafter referred as 'EPF') as well.

Thereafter, the Petitioner was promoted as a Senior Lecturer. However, after his retirement with effect from 27.09.2011, the Petitioner was not granted the pension to which he is entitled in terms of Section 2.7 of the Cabinet Pension Scheme Minutes. Therefore, the Petitioner has come before this Court since all the appeals made by him were refused.

After the issuance of formal notice, the Respondents filed their respective objections as well. Thereafter, this matter was argued before me on 08.12.2025. Hence, this judgment.

The following arguments were advanced by the respective counsel. In addition to that, written submissions were also filed.

Arguments

Mr. Ariyaratnam, the Counsel for the Petitioner, contended that in a similar circumstance, another person named J.H.T. Jayamaha, had been given proper pension in terms of Rule 2.7 of the Minutes of the Pension Board. Further, he argued that the denial of the Petitioner's full pension is due to the fact that he had not served at least 10 years before he was absorbed into the new cadre.

On the other hand, Ms. Nayomi Kahawita, S.S.C., argued that J.H.T. Jayamaha, had been illegally given his pension; however, she asserted that the circumstances are different, as the Petitioner has only been in the cadre for 8 years and 5 months, which is insufficient to obtain the full pension, while the other person had more than 9 years in the cadre, which is a little less than 10 years. Nevertheless, she contended that the other person had obtained his pension illegally; therefore, the Petitioner is not entitled to his pension by illegal means.

The second argument advanced by Ms. Kahawita is that, when the Petitioner sought his pension, the relevant organization was not in existence; therefore, such cadre was not in existence. As such, the relevant period to claim the full pension is not available.

Factual matrix

The Petitioner joined the Department of Technical Education and Training as a Lecturer in Class III of the Technical Education Service as far back as 1988. The said appointment is established by the document marked as **X1** annexed to the Petition.

Thereafter, the Petitioner was promoted to Class II with effect from 01.07.1993, as evidenced by the document marked as **X2** annexed to the Petition. Thereafter, a Cabinet decision was taken to absorb certain selected academic and non-academic staff into the Sri Lanka Institute of Advanced

Technological Education, and the said Cabinet decision is marked as **X3** annexed to the Petition. Subsequently, the Petitioner was absorbed into the Advanced Technological Education Service by the document marked as **X4**. According to the said document **X4**, the Petitioner asserts that he is entitled to a pension in addition to EPF and ETF.

Thereafter, the Petitioner was promoted to the Grade II cadre in the Sri Lanka Institute of Advanced Technological Education as a Grade II Officer by the document marked as **X5**. Thereafter, the Petitioner was further promoted to the post of Senior Lecturer by the document marked as **X6**, which is annexed to the Petition. Subsequently, the Petitioner retired with effect from 27.09.2011.

The Petitioner's position

The Petitioner asserts that he is entitled to a pension in terms and provisions of the Pension Scheme Minutes Section 2.7; the said Pension Scheme is reflected in the document marked as **X9**, which is a letter addressed to the Secretary of the Ministry of Public Administration by the Director General of Pensions.

However, the Petitioner alleges that he was subsequently denied a pension in terms of Section 2.7 of the Pensions Minutes, to which he claims that he is entitled to; consequent to a Cabinet decision taken in 2012. The said Cabinet decision is annexed to the Petition and marked as **X10**.

The Petitioner states that against the said decision, he made a complaint to the Human Rights Commissioner as well; however, he was unable to obtain any relief therefrom.

In addition to this allegation, the Petitioner further asserts that another person who was in the same class as the Petitioner had been treated differently, which is clearly indicated by the document

marked as **X15**. However, as the Petitioner was unable to obtain the relief sought, namely the pension, he has sought the intervention of this Court.

Objections of the Respondents

However, on the other hand, according to the objections filed by the 1st to 4th and the 26th Respondents, it is their position that the Petitioner, having been appointed as a Lecturer in the Department of Technical Education and Training with effect from 01.09.1988, was released to the Sri Lanka Institute of Advanced Technological Education on 01.03.1997. At that time, his period of Government service amounted only to 8 years and 6 months. Therefore, in order to qualify and be eligible to obtain a pension in terms of Section 2.7 of the Minutes on Pensions, there should be a minimum completion of 120 months of gross service prior to the abolition of his office.

Therefore, the Petitioner is not entitled to a pension in terms of Section 2.7 of the Pension Minutes. Accordingly, he is not qualified to claim the said pension, and as such, this application should be dismissed.

According to the document marked as **X15**, which is a letter written by the Director of Pensions addressed to the Secretary of the Ministry of Public Administration, with regard to the Petitioner's grievance, it is stated that the Petitioner had already retired by 2011; however, he is not entitled to a pension in terms of Clause 2.7 of the Minutes on Pensions dated 01.03.1997.

The Petitioner's complaint

The Petitioner's complaint is that there was a Cabinet decision subsequent to his retirement to the effect that, unless a pensioner had completed 10 years of service prior to the absorption of such service into the present service, such pensioner would not be entitled to the pension scheme in terms of Section 2.7 of the Pension Minutes, referred to in the document marked as **X9**.

Therefore, the Petitioner has made complaints to several authorities, and the relevant heads of the departments have also responded to the Petitioner's complaints. However, the Director General of Pensions, by document **X15**, responded to the Petitioner's complaint accordingly.

Finally, in responding to the Petitioner's appeal made to the Secretary to the Ministry of Public Administration, the Petitioner's complaint was turned down on the basis that he had not completed 120 months of service in the department which he had joined prior to the absorption into the present service. Therefore, it was stated that the Petitioner is not entitled to claim any pension in terms of Section 2.7 of the Pension Minutes, referred to in **X9**. The Petitioner is challenging the said decision before this Court.

However, on a perusal of **P15**, the letter written by the Director General of Pensions responding to the Petitioner's appeal, had stated the fact that a gentleman named J.H.T. Jayamaha, who was in a position similar to that of the Petitioner, had been granted a pension in terms of Clause 2.7 of the Pensions Minutes dated 01.03.1997. The said pension was approved by a special Cabinet Memorandum.

Therefore, if Mr. Lankage, the Petitioner, is also to be entitled and eligible for such a pension under the same provision, a Cabinet Memorandum would need to be passed, which the Director General of Pensions cannot authorize, such a measure would have to be initiated by the Petitioner through his department. However, since the Petitioner has already retired, it may no longer be possible for this process to be undertaken, and they are accordingly not in a position to do so.

However, their position is that Jayamaha's pension was granted pursuant to a special Cabinet decision, which is considered a deviation from the normal course, and the Petitioner's complaint is also the same. Therefore, it is my view that, since Jayamaha, who was in a situation very similar

to that of the Petitioner, was granted his pension through a special Cabinet Memorandum, the Cabinet, at that time or thereafter, has not extended the same consideration to the Petitioner.

Application of the Pension Minutes

As submitted in the objections and also in the course of the submissions made on behalf of the Respondents, the Petitioner has not completed 120 months (10 years) of service prior to the absorption into the service from which he retired. Thus, now I will see how Section 2.7 of the Pensions Minutes, dated 01.03.1997, applies to the Petitioner.

The relevant section of the Minutes on Pensions is reproduced as below;

"2.7. (1) In the case of abolition of office, the pension or gratuity grantable to a public servant whose office has been declared to be pensionable will be as follows:-

(i) If the officer has completed one hundred and twenty months' gross services, he may be granted a pension of 1-720ths of his salary for each month of his service counting for pension in accordance with section 10, with an addition to such service of one month for each complete period of two months' service, the addition in no case exceeding one hundred and twenty months.

On a plain reading thereof, the Petitioner needs to complete 120 months of the service before he is granted pension.

However, he is otherwise entitled to the following as the said Section 2.7 provides for;

"(ii) If the officer has not completed one hundred and twenty months' gross service, he may be granted gratuity of 1-12th of a month's salary for each month of service counting for pension in accordance with section 10, plus an addition of 50 per cent, thereon."

Therefore, the said Section 2.7 of the Pension Minutes cannot be applied. On a perusal of the said minutes, it is my view that since the Petitioner had joined the service as a Class III officer of the Department of Technological Education and Training in 1988, and the absorption marked as **X3** and **X4** had taken place only in 1997, the Petitioner had not completed 120 months (10 years) of service, but had completed only 8 years and 5 months.

As such, it is very clear that, for the Petitioner to be eligible to qualify for the pension under Section 2.7, he ought to have completed 120 months (10 years) in the original service, namely the Department of Technological Education and Training. Therefore, it is my view, on a plain reading of the said provision, that the Petitioner is not entitled to the said pension in terms of Section 2.7.

However, I will now consider whether a person named J.H.T. Jayamaha,, who had been in a similar position to the Petitioner, had been granted the pension in terms of Section 2.7 of the said Pension Minutes, referred to in **X9**. Therefore, the question now arises, as argued by the Petitioner, whether he is also entitled to such pension, since the Petitioner has been denied the said pension in terms of the document marked as **X16**, annexed to the Petition. Accordingly, I have to consider whether **X16** is irrational, illegal, and contrary to the evidence placed before Court by the parties.

However, it was counter argued by Mrs. Kahawita, as referred to above, that the said Jayamaha had been granted the pension in terms of Section 2.7 illegally. Therefore, the Petitioner cannot seek, through Court, the performance of such an illegal act.

This matter has been clearly considered and documented in the document marked as **X15**, which was sent by the Director General of Pensions to the Secretary of the Ministry of Public Administration. According to this document, the said J.H.T. Jayamaha had been granted a pension

in terms of Section 2.7 of the Pension Minutes by virtue of a Cabinet Memorandum, which had been approved by the Cabinet as a special case at his request, made through his departmental head.

Therefore, it appears that the said Cabinet decision was taken to circumvent the requirements of Section 2.7 of the Pension Minutes, which mandates the completion of 120 months of service. However, at the time the absorption took place, the said Jayamaha had completed more than 9 years but less than 10 years of service. Therefore, he had been granted a pension, which is somewhat different from the Petitioner's case. On the other hand, his situation is also very similar to that of the Petitioner, because the Petitioner had completed only 8 years and 5 months, whereas Jayamaha had completed closer to 10 years, and more than 9 years.

However, no such request had been made to the Cabinet through the proper channel for the Cabinet to take action. In any case, neither the Head of the Department, the Director General of Pensions, nor the Secretary to the Ministry of Public Administration can initiate such a request unless it has been submitted by the Petitioner through his department.

Therefore, since the Petitioner has now retired, there is no departmental head who can initiate such a request. Therefore, as argued by Mrs. Kahawita, it is my view that the Petitioner's application cannot be accepted and must be rejected, because the irrational act already performed in favor of Jayamaha cannot be rationally applied to the Petitioner.

In those circumstances, it is my view that if the rules encapsulated in the Cabinet Memorandum dated 01.03.1997 are followed, the Petitioner had not completed ten years of service at the time he joined the Sri Lanka Institute of Advanced Technological Education. Consequently, it is my view, the Petitioner is not entitled to the relief he seeks, as the Respondent Officers, being officers of the State, cannot grant such relief except through a Cabinet Memorandum, which this Court is unable

to compel in view of the rules contained in the said Minutes of the Cabinet Memorandum dated 01.03.1997.

Conclusion

Accordingly, for the reasons adumbrated above, it is my view that this Application is liable to be dismissed, and is therefore dismissed without costs.

JUDGE OF THE COURT OF APPEAL