

**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 Writ of Mandamus under and in terms of  
Article 140 of the Constitution.*

**C.A. Writ Application No.314/23**

Jasenthu Hewage Willy Stanley Perera,  
Madhu Sewana,  
Panapitiya Road,  
Pothupitiya,  
Wadduwa.

**Petitioner**

-Vs-

1. Mr. Kapila C.K. Perera,  
The Secretary,  
Ministry of Transport and Highways,  
7<sup>th</sup> Floor,  
Sethsiripaya,  
Battaramulla.
2. Air Vice Marshall Sampath Thuyacontha,  
The Secretary,  
Ministry of Defence,  
Defence Headquarters Complex,  
Sri Jayawardanepura Kotte.
3. Lieutenant General Lasantha Rodrigo,  
Commander of the Army,

Army Headquarters,  
Sri Jayawardanepura Kotte.

4. Mr. A. Jagath D. Dias,  
Director General of Pensions,  
Department of Pensions,  
Maligawatta,  
Colombo – 10.

5. Director Pay and Records,  
Sri Lanka Army,  
Homagama.

**Respondents**

Before : **Hon. Rohantha Abeyesuriya PC, J.(P/CA)**  
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Heshani Chandrasinghe for the Petitioner.  
Dilantha Sampath, SC for the Respondents.

Written Submissions : Petitioner filed on 29.10.2025  
Respondents filed on 10.11.2025

Decided on : 21.01.2026

**K. Priyantha Fernando, J. (CA)**

The Petitioner initiated this application dated 08.06.2023, seeking a Writ of *Mandamus* to compel the Respondents to calculate and grant him the pension to which he claimed he was legally entitled

after nearly 25 years of aggregate service in the Department of Highways and the Sri Lanka Army Volunteer Force.

THE POSITION OF THE PETITIONER:

The core issue presented was that the Respondents have failed and neglected to grant the pension for over three decades. This delay was allegedly exacerbated by the relevant departments, particularly the Ministry of Highways and the Sri Lanka Army, misplacing or destroying essential service documents, including records lost during the 2004 Tsunami disaster.

The petitioner asserted his right to the pension based on his service record and specifically relied upon the Extraordinary Gazette No. 2203/7 (dated 2020.11.23), which amended the Army Act and provided for the pension eligibility of Volunteer Force Officers with prior government service. The Petitioner contended that the Respondents failed to act on this clear statutory duty and neglected to follow the Circular on Pensions 3/2015 (1) P.V. concerning misplaced personnel files. Consequently, the petitioner invoked this Court's jurisdiction as a final recourse after exhausting other channels, including correspondence with the President and a petition to the Parliamentary Committee on Public Petitions.

THE POSITION OF THE 1<sup>ST</sup> TO 5<sup>TH</sup> RESPONDENTS:

The Respondents resisted the application, raising fundamental preliminary objections and substantive factual denials. Their principal objection was that the present application was barred by the doctrine of *Res judicata*, as the identical relief was sought and the same matter previously decided and dismissed by this Court in an earlier Writ Application (CA(Writ) 344/2019) by a judgment (dated 17.10.2023).

Substantively, the Respondents denied the Petitioner's eligibility, contending that his **reckonable Army service** was only 12 years, 4 months, and 22 days, and that he previously received gratuity payments from both the Army and the Department of Highways upon resignation/termination. Crucially, they asserted that a ministerial committee inquiry concluded that the Petitioner was not

entitled to a pension as his service was not in a position of permanent employment for the requisite period. Accordingly, the Respondents maintained that they acted legally at all material times and prayed for the dismissal of the petition.

#### COUNTER-OBJECTIONS OF THE PETITIONER (05.08.2025)

The Petitioner filed a Statement of Counter-Objections, denying the allegations of the 1<sup>st</sup> to 5<sup>th</sup> Respondents and firmly rebutting the charge of *laches*. He asserted that he diligently sought relief from multiple authorized institutions, including the Public Petitions Committee of Parliament, before approaching the court, thereby ensuring the issue was continually known to the relevant authorities. The Petitioner maintained that those responsible previously failed to act in accordance with the rules of Natural Justice and the Principle of Legitimate Expectation, thus necessitating his Petition. Furthermore, he denied any misrepresentation of facts, confirming that he submitted all available documentation.

Crucially, the Petitioner challenged the assertion that he was ineligible for a pension, arguing that combining his full-service periods with the Ministry of Highways and the Sri Lanka Army would meet the required criteria. He attributed the failure to combine these periods to the negligent actions of government institutions and, specifically regarding his initial service (from 1968 to 1979), stated he was not liable for the misplacement of documents by the Ministry of Highways.

To prove his entitlement, the Petitioner drew attention to a document issued by the Department of Pensions (on June 16, 1992), which cited Pension Number 3637 in his name. Additionally, he cited the Establishments Code, which stipulated that any employee with five years of casual or temporary service should be made permanent, supporting his eligibility when the combined service period was considered.

The Petitioner, an 81-year-old individual who tragically lost his proper eyesight due to an injury sustained during military service, ultimately submitted that the Respondents failed to refute the essential averments of his Petition and that he was entitled to the reliefs sought.

The Petitioner submitted that he was legally entitled to a reasonable pension based on **his extended service with both the Ministry of Transport and Highways and the Sri Lankan Army**. His service began in 1967 as a labourer with the Department of Irrigation, continued with the Department of Highways from 1968, and was followed by service as an Officer in the Volunteer Brigade of the Sri Lanka Army from September 1969 until August 1991. The Petitioner asserted that responsible authorities unnecessarily delayed and neglected to resolve this issue over many years, forcing him to invoke the court's jurisdiction as a last resort to seek a Writ of Mandamus. Crucially, the Petitioner established his entitlement by citing a **report from a committee appointed by the Secretary of Defence**, which verified his service period in the Department of Highways as 10 years and his service in the Sri Lankan Army as 12 years, 6 months, and 22 days.

The Petitioner contended that the **combined service met the required criteria** for a pension under the Establishments Code, specifically noting that the pension was granted for employees who completed 2,520 days of service. He challenged the claim by the Senior Assistant Secretary that 2,750 days were required, arguing that this represented an unjustifiable change to the code made specifically against his interests. The Petitioner also pointed out that other officers with similar circumstances were informed that their pension payments fell under the purview of the Ministry of Defence, and a letter from the Director of Pay and Records indicated that the Department of Highways service period could be combined with his military service. (vide P5)

The Petitioner further contended that his failure to secure the pension was primarily due to the negligence of the relevant departments, which misplaced all documents related to the matter, including his service file from the Matara Army Division following the tsunami disaster. He referenced Circular on Pensions 3/2015 (1) P.V. concerning misplaced files, arguing the Secretary of the Ministry of Highways failed to comply with it.

Furthermore, he noted that the Department of Pensions issued a document (on June 16, 1992), citing Pension Number 3637 in his name, which suggested the possibility of granting the pension. The Petitioner, now 81 years of age and partially blind due to a bomb attack sustained while in military service, argued that officers who risked their lives in the Army Volunteer Corps, like

himself, should have been given greater consideration as outlined in a Cabinet paper (dated March 29, 1972).

CONCLUSION:

The main preliminary objection raised by the respondents is that the same subject matter has previously been decided by this Court in the case of CA/WRIT/344/2019 and the petitioner is guilty of *Res judicata*.

It is revealed that the Petitioner, along with ten other individuals who had been employed as casual labourers in the Department of Highways has filed the Writ Application No. 344/2019 by Petition marked **R10**, and sought a Writ of Mandamus for payment of Pension to the Petitioners. The reliefs prayed for in R10 are as follows: (a) Issue Notices on the Respondents; (b) Call for and examine the entire record pertaining this application; (c) Grant an order in the nature of Writ of *Certiorari* quashing the decision reflected in P30 which denied the Petitioners' entitlement of the pension; (d)... Writ of Mandamus directing the 3<sup>rd</sup> respondent to take necessary steps to retire the Petitioners with effect of 01.04.2016 and to make the payment of pension to the Petitioners with effect from 01.04.2016 in accordance with P17 and P17(a); (e) ...Writ of Mandamus directing the 1<sup>st</sup> and 3<sup>rd</sup> respondents to act in accordance with the Cabinet Decision reflected in P14 and implement the Cabinet Decision P14.

The order delivered in the said Writ application on 17.10.2023 revealed that as per the Cabinet Memorandum pertaining to the winding up of the Department of Highways dated 15.08.1985 (**6RA2**), the Petitioners were paid a sum of Rs. 20,000/- each as compensation; the petitioners who received compensation had also signed the document marked **6RA3**, consenting that this is a full and final payment; it is borne out from the document marked as 6RA3, that the Petitioners, those who are entitled, were paid gratuity payments as well.

The Petitioner has filed instant writ application on 08.06.2023 while the Writ Application 344/2019 was pending before this Court in which similar reliefs had been prayed for without waiting for the judgment in 344/2019. Thus, the present application becomes *Res judicata*.

It is revealed that the major issue of Petitioner's entitlement to a pension has been fully determined in the Writ Application 344/2019. In Saundra Marakkala Imasha Lahiruni Upeksha and others v. Hasitha Kesara Weththimuni and others - CA/Writ/166/2017 decided on 4<sup>th</sup> April 2019, His Lordship Justice Janak de Silva J. set out the following criteria that must be satisfied in establishing a plea of estoppel:

- i. Finality of the decision on the issue
- ii. The determination must be fundamental, not collateral
- iii. Identity of parties
- iv. Same Capacity
- v. Precisely the same and identical issues or questions must have been identified.

The Petitioner has failed to disclose the fact that he had participated in the three-member committee inquiry appointed under Section 5.4 of the Public Administrative Circular 121 (R6) for ascertaining the tenure of service of the Petitioner at the Department of Highways prior to its winding up in 1986. It is clear from the reply letter dated 02.09.2022 (P17) addressed to the author of the letter of demand dated 16.08.2022 (P16) that such an inquiry had in fact been held and the relevant report had been submitted to the respective authorities.

The Petitioner has also failed to disclose that another Writ Application No. 344/2019 had been filed before this Court and pending at the time of instituting instant case. Our Courts have time and again emphasized the importance of full disclosure of all material facts at the time of invoking writ jurisdiction - Alponso Appuhamy v. Hettiarachchi-77 NLR 131, Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and others-2002 (1) SLR 277, Dahanayake and others v. Sri Lanka Insurance Corporation Ltd. And others (2005) 1 SLR 67.

It is admitted by the Respondents that as per documents marked P4 and R1, the Petitioner has served in the Voluntary Force of Sri Lanka from time to time between the period of 14.09.1969 to 01.08.1991 and completed 12 years, 4 months and 22 days of reckon-able service. The Petitioner

has been paid Rs. 38,184/- as gratuity for the said period of service at the time of resignation from the service of Sri Lanka Army on 01.08.1991.

It is proved that the Petitioner has served in the Volunteer Force of Sri Lanka Army from time to time between the period of 14.09.1969 to 01.08.1991, and he has 12 years 4 months and 22 days of reckon-able service in Sri Lanka Army Volunteer Force. (vide P4). As per letter date 23.11.2021 marked as R1, the Petitioner has voluntarily resigned from the service of Sri Lanka Army on 01.08.1991 and has been paid Rs. 38,184 as gratuity for his service of 12 years, 4 months, and 22 days. As per the letter of appointment dated 21.12.1982 and letter dated 02.10.1985 marked as R2(a) and R2(b), while serving in the Volunteer Force of Sri Lanka Army, the Petitioner has obtained no pay leave and served in the Department of Highways as a casual labourer from 01.08.1980 to 01.02.1985. Later by Cabinet Decision, the Department of Highways has been wound up, and the functions and activities carried out by the Department of Highways has been transferred to the Road Development Authority with effect from 01.01.1985, by Cabinet Memorandum bearing 19/85 dated 15.08.1985 and its corresponding Cabinet Decision (vide R3).

It is seen that when services of employees were terminated as a result of the winding up of the Department of Highways, information has been collected from employees who lost their jobs for rendering them further relief of compensation. Vide copies of notice dated 06.10.2015 and the list of personal files marked as R4(a) and R4(b). With regard to the information of the Petitioner's service period, the Ministry of Highways has not found any personal file or any other detail from the sub offices relevant to any services rendered from 1968-1979. The details which are presently available to the Ministry is that the Petitioner has served in the Department of Highways as a casual labourer from 01.08.1980 to 01.02.1985.

In order to confirm the service period of the Petitioner, the Ministry has appointed a committee as per section 5.4 of the Public Administration Circular 121 to ascertain the tenure of service of the Petitioner. (vide R5 and R6). The said Committee after holding an inquiry on 22.03.2021 with the participation of the Petitioner has decided that since the Petitioner has **not been in service in a position of permanent employment** for the relevant period required, the Petitioner is not entitled to receive pension. [vide R7(a), R7(b) and R8].

Furthermore, the Petitioner had been paid Rs. 20,000/- as a gratuity payment from the Department of Highways at the time of terminating his employment. (vide R9). Moreover, a Writ Application bearing no. CA (Writ) 344/2019 has been instituted by 11 employees who had been employed as casual labourers in the Department of Highways, (including the Petitioner, who was the 11<sup>th</sup> Petitioner in the said case) and sought a Writ of Mandamus for payment of pension to the Petitioners, which is the same relief sought in this case. However, by judgment dated 17.10.2023, this Court has dismissed the said Application. (vide R10 and R11). In paragraph 10 of the Petition, the Petitioner has relied on the Extraordinary Gazette No. 2203/7 dated 23.11.2020 marked as P13. However, it is revealed that the provisions (j), (k) and (l) relied on by the Petitioner are not relevant so far as the Petitioner is concerned as he has served in the Sri Lanka Volunteer Force as a Soldier in the rank of Corporal.

The Petitioner has pointed out that other officers with similar circumstances were informed that their pension payments fell under the purview of the Ministry of Defence, and a letter from the Director of Pay and Records indicated that the Department of Highways service period could be combined with his military service. However, these facts could have been placed before the three member committee appointed under the Public Administrative Circular. The Petitioner has not been able to establish his combined service is sufficient to make him entitled for any pension.

For all the above reasons, I dismiss this writ application without costs.

**Judge of the Court of Appeal**

**Hon. Rohantha Abeysuriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**