

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

In the matter of an application for a
mandate in the nature of a writ of certiorari
under Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

1. Horana Plantations PLC,
No. 08, Sir Chittampalam A Gardiner Mw,
Colombo 02.
2. M.L.U.C.U. Pinto,
Eildon Hall Estate,
Lindula.

C.A. (Writ) Application No. 136/2010

PETITIONERS

Vs

1. The Minister of Labour Relations
and Manpower,
Ministry of Labour Relations and
Manpower, Labour Secretariat,
Narahenpita, Colombo 05.
2. The Secretary,
Ministry of Labour Relations and
Manpower, Labour Secretariat,
Narahenpita, Colombo 05.
3. The Commissioner General of Labour

Labour Department,
Colombo 05.

4. W.J.L. Wijayaweera,
Commissioner of Labour,
Labour Department,
Colombo 05.
5. Assistant Commissioner of Labour,
District Labour Office,
Hatton.
6. Ceylon Estate Staff's Union,
No.06, Aloe Avenue,
Colombo 03.
7. Mr. C. Karthigesan,
Eildon Hall Estate,
Lindula.
8. Mr. A.Y.W. Yusuf,
No. 26, Malwatte Mw,
Kohuwela.
9. Mr. T.E. Santharajan,
No.181/5-503.
W.A. Silva Mw,
Colombo 06.

RESPONDENTS

BEFORE

: S. Sriskandarajah J. (P/CA)

Deepali Wijesundera J.

COUNSEL

: Sanjeewa Jayawardena for Petitioner

M.N.B.Fernando DSG for Respondents

ARGUED ON

: 17th July, 2012.

DECIDED ON

: 28th September, 2012

Deepali Wijesundera J.

The petitioners have made an application to this court to issue a writs of certiorari to quash the decisions of the 1st respondent dated 19/11/2009 (P13, P14 & P15) and the decision of the 2nd respondent dated 16/10/2009 (P16). And also for an interim order to stay the proceedings of the arbitration before the 9th respondent and to call and examine the entire record.

The petitioner is a company incorporated and registered under the company law and the 2nd petitioner is the superintendent of an estate owned by the 1st petitioner company. The 7th respondent is an employee of the petitioners and a member of the 6th respondent Trade Union. The 7th respondent has retired on 31/12/2003.

The 1st petitioner has observed a practice of granting a productivity incentive for the employees depending on the profits of the

estate under a scheme which is marked as **P5**. The productivity incentive for the year 2002/2003 was paid on 12/03/2004 by which date the 7th respondent had retired and he was not paid the said incentive. The 6th respondent acting on behalf of the 7th respondent complained to the 5th respondent Assistant Commissioner of Labour, Hatton. (**P7**)

The 1st respondent acting under Section 4(1) of the Industrial Dispute Act had referred the said dispute for arbitration and had appointed the 8th respondent as arbitrator (**P8**). Both parties after notice have filed their statements (documents marked **P9**, **P10 (a)** and **P10 (b)**, **P11** and **P11 (a)**). The petitioner raised a preliminary objection at the arbitration and the 8th respondent after considering the arguments placed by both parties have made an order dated 26/03/2008 (**P12**) stating that the dispute does not come under Sec. 4(1) of the said act.

The 1st respondent on 19/11/2009 has appointed the 9th respondent as the arbitrator to inquire and settle the matter (**P14**). The parties were noticed to make representations at the office of the 3rd respondent for the inquiring (**P17**). The inquiry was fixed for 25/02/2010.

The petitioners argued that the 1st respondent is vested with statutory power in terms of Sec. 4 of the Industrial Disputes Act to only refer an Industrial dispute for settlement by arbitration to an arbitrator appointed by him, and once this is done the 1st respondent ceases his involvement in the said proceedings and is functus and he cannot repeat the same exercise in respect of the same matter Sec. 4(1) of the Industrial Disputes Act states:

“The Minister may, if he is of the opinion that an industrial dispute is a minor dispute, refer it, by an order in writing, for settlement by arbitration to an arbitrator appointed by the Minister or to a labour tribunal, notwithstanding that the parties to such dispute or their representatives do not consent to such reference”.

The petitioners have cited the case of **Piyadasa V Bata Shoe Co. 1982 (1) SLR 91** and the case of **Nadarajah Ltd V Krishnadasan 78 NLR 255**. Where it is stated that the Minister once the reference is made to the arbitrator is functus in terms of Sec. 17 and the order of the arbitrator cannot be revoked by the Minister.

The argument of the respondent was that the 8th respondent's order marked **P12** is an interim order and the said issue was clarified by letter dated 14/05/2009. The 8th respondent in reply to the 3rd respondent's letter by his letter dated 10/06/2009 has stated that **P12** was an interim order and has further informed that he has fallen sick and was unable to act as an arbitrator. (**3R5 and 3R6**). He has further informed that the dispute had not been concluded and has requested the commissioner of Labour to refer the matter to another arbitrator (**3R7 and 3R8**). The respondent stated that in view of the above the 8th respondent did not make an award by **P12**.

The respondents stated that upon been informed by the 8th respondent that **P12** was an interim order and that he's unable to continue the arbitration, recommendation was made to the 1st respondent to revoke the appointment of the 8th respondent and appoint

a new arbitrator, and stated that **P13, P14, P15 and P16** are valid legal documents and the application of the petitioners be dismissed with costs.

This court has to decide whether the arbitrator's finding is final or is it an interim order. On perusal of document marked **3R6** dated 10/06/2009 which is a letter sent by the 8th respondent to the Commissioner of Labour it is clearly stated that the order he made is an interim order and that he is unable to continue with the arbitration again on 29/07/2009 he has written another letter marked **3R8** in reply to letters **3R5** and **3R7** stating that the arbitration was not concluded. Order dated 26/03/2009 by the 8th respondent which is marked as **P12** by the petitioners clearly states on top "Interim Order" this was made on the preliminary objections taken up by the petitioner. When considering these documents one cannot say **P12** is a final order. **P12** is referred to as an interim order in order to clear the uncertainties and ambiguity in **P12**. The Commissioner of Labour has written to the arbitrator and clarified the issue thereafter steps were taken for the appointment of another arbitrator, as the first arbitrator has ceased to function and there is a frustration of the reference. In the case of **Equipment and Construction Co. Ltd. Vs Ranasinghe (1985 1 SLR 82)** it was held that a situation may arise which necessitate a second reference. In order to achieve the objects of the said Act and to bring the issue to a final conclusion the respondents had taken these steps.

For the reasons stated above I decide that the respondents have acted according to the provisions of the Industrial Disputes Act and that the orders made by the respondents are valid and legal and not arbitrary. Therefore the reference to arbitration is a valid legal order. The

application of the petitioners is misconceived in law and there is no ground or reason to issue writs of certiorari. Application of the petitioners is dismissed with costs fixed at Rs. 50.000/=

JUDGE OF THE COURT OF APPEAL.

S.Sriskandarajah J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL