

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 Certiorari made in terms
of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

C.A. Application No.726/10

Schaupub Holdings (Pvt) Limited,
No.123, "Sampatha", Main Road,
Attidiya, Dehiwala.

Petitioner

Vs.

01. Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
Narahenpita,
Colombo 05
And others.

Respondents

BEFORE

: **S. SRISKANDARAJAH, J (P/CA)**
H.N.J.PERERA, J

COUNSEL

: **Ranil Samarasooriya,**
for the Petitioners,

Gamini Hettiarachchi

for the 4th to 30th Respondents.

V de Abrew SSC

for the 1st to 3rd Respondents

Argued on : 09.12.2011

Decided on : 17.07.2012

S.Sriskandarajah.J,

The Petitioner is a Company and it was engaged in the business of managing and marketing agencies manufacturing industry, hospitality industry and construction industry. The Petitioner submitted that on or about 25th August 2004, it entered into a management agreement with the partners of Warna Associates and Warna Associates (Pvt) Limited for the management of the factory complex of Warna Associates and Warna (Pvt) Limited situated at Homagama under the name and style of Schaupub Holdings (Pvt) Limited for a period of 16 years commencing from the date of execution of the said management agreement.

As per the said Management Agreement, the Petitioner undertook to repay and service a number of loan facilities that were obtained by Warna Associates and Warna Associates (Pvt) Limited. Due to the failure of the settlement of the loan debts, cases were filed by the banks who had given the said loans and obtained judgment in their favour and in view of these judgments, the factory buildings were vested to the Commercial Bank of Ceylon and to Hatton National Bank. As a result of this the Petitioner submitted that it could not continue with the day to day business and the operations of its factory and, as such, the Petitioner had to close down the factory on the 23rd of October 2008. In view of the said closure, the factory's business and operations

came to a halt, and the Petitioner was not in a position to pay the salaries of the employees as it did not have funds to meet the said liabilities. Therefore, the Petitioner brought these difficulties to the notice of the 1st Respondent, the Commissioner of Labour, by letter dated 30th October 2008 as the employees are redundant due to the closure of the factory. In response to the aforesaid letter an inquiry was held on the 25th November 2008 by the Deputy Commissioner General of Labour. In the said inquiry the Directors of the said Petitioner Company did not participate and they have requested the Deputy Commissioner General of Labour to re-fix the said inquiry. Accordingly the inquiry was rescheduled to the 11th of December 2008, and on the 11th December 2008, the Petitioner and some of the employees took part and the said inquiry was chaired by the Assistant Commissioner of Labour, the 3rd Respondent, and at the said inquiry it was discussed as to how this matter could be resolved, but they have not reached a settlement as it is not possible to reopen the factory by settling the loans due to the Banks. The Petitioner contended that thereafter no inquiry was held and, to his surprise and dismay, the 1st Respondent has forwarded his decision dated 31st of March 2009 containing the names of the employees and the amount of compensation payable to the employees. The Petitioner contended that prior to the deliberation of the aforesaid impugned decision of the 1st Respondent, no opportunity was given to the Petitioner to submit its financial capacity of paying compensation to the said employees and to place before the Commissioner the fact that all the employees were re-employed immediately after the retrenchment and two of the employees were employed by the Directors of the Petitioner Company in another Company owned by the Directors of the Petitioner Company. The Petitioner submitted that the 1st Respondent has directed the Petitioner Company to pay a total sum of Rs.2,372,375/- as compensation and salaries in arrears to the 4th to the 32nd Respondents in this Application. The Petitioner further submitted that the said amount is excessive and the Petitioner had not accepted this amount and, therefore, the said decision of the 1st Respondent dated 31st March 2009 is bad in law and it is in contravention of Section 17 of the Termination of Employment

Act No.45 of 1973 and, therefore the Petitioner has sought a mandate in the nature of a Writ of Certiorari to quash the said decision.

It has been contended on behalf of the Commissioner General of Labour that the application for retrenchment was made by the Petitioner Company and the 1st Respondent has summoned the Petitioner Company and the employees for an inquiry and at the said inquiry, on the request of the petitioner Company and the employees, they were permitted to file written submissions and both parties agreed to arrive at a decision on the written submissions submitted to the Commissioner General of Labour. On these written submissions the Commissioner General of Labour has come to the conclusion that the said Petitioner Company was closed and steps had to be taken under Section 6A of the Termination of Employment Act No.45 of 1971. Compensation payable under these circumstances are now formulated and published in gazette, and the Commissioner has relied and formally published in the Gazette No.1384/2007 and in those circumstances the Commissioner has no discretion to consider the capacity of the Company to pay compensation or whether the employees are engaged in any other gainful employment after their services were terminated. In those circumstances the Commissioner's decision contained in his letter dated 31st March 2009 cannot be challenged by way of a Writ of Certiorari. In the circumstances this Court dismisses this Application without cost.

President of the Court of Appeal

H.N.J.Perera, J

I agree,

Judge of the ~~Court~~ of Appeal