

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

In the matter of an application for
mandates in the nature of Writ of
Certiorari and mandamus in terms of
Article 140 of the Constitution.

1. St. Jude's Industries Ltd.
 2. Tawashi Industries (Pvt) Ltd.
- Both of "Dutch House", No.34/1, Castle
Street, Colombo 08.

Petitioners

C.A. (Writ) Application No. 138/2008

Vs.

1. D.S. Edirisinghe, Commissioner
General of Labour, Labour
Secretariat, Colombo 05.
2. K.D. Manoj Priyantha, Deputy
Commissioner of Labour (Acting)
Termination Unit, Labour
Secretariat,
Colombo 05.
3. I.P. Padmini, 49, Morupola,
Gampaha.
4. D. Ratnayake, 96/10, Sirimal
Uyana,

Sudharshana Mawatha, Gampaha.

40 other Respondents

Resondents

BEFORE : **S.Siskandarajah, J, P/CA**

COUNSEL : Upul Kumarapperuma with K.Dissanayake,
for the Petitioners.

Milinda Gunathilake, SSC,
for the 1st and 2nd Respondents.

Chandana Wijesooriya with Buddika Gamage
For the 3rd to 44th Respondents

Argued on : 02.06.2011

Decided on : 14.09.2012

S.Sriskandarajah, J

The 1st and 2nd Petitioners are companies incorporated under the Companies law of Sri Lanka. The Petitioners submitted, as at 31st December 2006, the Petitioners, together, employed about 60 employees at the factory situated at Church Road, Indigolla, Gampaha, which was manufacturing brushes for export. The Petitioners submitted that the said company had been experiencing a decline in the quantity of the brushes being manufactured at their factory and had received several complaints from their overseas customers. The Petitioners were also incurring losses due to poor

quantity of raw material supplied that has left delays and waste in the factory. The management had brought these difficulties to the notice of the employees of the factory. The Petitioners further submitted that they could not improve the quality of the product due to the fact that the employees have failed to change their attitude towards the Petitioners; as a result of the said situation, the Petitioners have no other option other than to suspend the manufacturing operations. Therefore, the Petitioners had decided to suspend the manufacturing operations with effect from 1st January 2007 in order to address the quality and other issues and to recommence operations once these issues had been addressed. Accordingly, this decision was conveyed to the employees by memo dated 21st December 2006 under the hand of the Director/General Manager, E.V. Munasinghe. The 3rd to the 44th Respondents who were employees of the Petitioners' company preferred applications to the Commissioner of Labour (Termination of Employment Unit) alleging that their services had been terminated on 1st January 2007, and requested that they be paid compensation according to the termination formula together with other statutory entitlements. On the 26th of January 2007, the 2nd Respondent held an inquiry into the termination application preferred by the 3rd to the 44th Respondents. After recording the statements of the workers' representatives, written submissions of both parties were filed. The 1st Respondent by letter dated 13th August 2007, informed the 1st Petitioner that it should pay a sum of Rs.5,064,006.22 to the 3rd to the 44th Respondents as compensation for termination of their services in terms of the gazette compensation formula under Section 6(d) of the Termination of Employment of Workmen (Special Provisions Law) No.4 of 1976, as amended.

The 1st Respondent in his letter has given his reasons for his decision. The 1st Respondent has stated that the Petitioners had unlawfully terminated the services of the 3rd to the 44th Respondents by closing their factory without obtaining prior written consent of the 1st Respondent or the workmen, as required by the Termination of Employment of Workmen (Special Provisions Law) No.4 of 1976, as amended. The Commissioner, in his decision, has also observed that even if the factory had been

closed down temporarily, permission of the Commissioner of Labour is necessary and he further observed, even at present, the factory remained closed. In these circumstances there is no alternative other than to pay compensation.

The Petitioner in this Application has sought a Writ of Certiorari to quash the said order for the reason that the said order is illegal, unreasonable and there is an error of law on the face of the record.

The Petitioner submitted that the 1st Respondent has failed to appreciate that there cannot be non-employment of any workman, whether temporarily or permanently within the meaning of the law, when the employer does not or cannot provide work, but continues to pay the workmen wages or salary. Even if the Petitioners had terminated the services of the 3rd to the 44th Respondents, the 1st Respondent was wrong in law in holding that the factory was closed down and that the only order that could be made was for compensation, whereas the Petitioners are ready to resume production in the said factory.

It would be seen from the evidence led before the Commissioner that the Petitioners were experiencing a decline in the quality of the brushes that were manufactured in their factory, and as a result, the Petitioners were compelled to pay compensation to their buyers from time to time due to the poor quality of their supply. As a result, the Petitioners had to suspend the operation of their factory at Katunayake and shifted all the employees to the factory at Indigolla, Gampaha. It is also in evidence that by memo dated 21st December 2006, the employees were informed that the Petitioners had decided to suspend the manufacturing operation with effect from 1st January 2007. The decision taken by the Petitioners that they pay salary to the employees and not offer any work would not come under the Termination of Employment of the Workmen cannot be substantiated as there is evidence to show that the employees were not given employment in their regular manufacturing activities, but they were requested to engage in cleaning the factory premises. This act of the

Petitioner Company is in fact effectively terminating the services of the workmen as they were neither given their regular manufacturing activities nor paid their salaries without providing them employment, but for the salary paid they were asked to perform certain functions which they were not recruited for or that they are willing to perform. Therefore, requesting the workmen to perform the function of cleaning the factory premises is effectively terminating their services as workers of the manufacturing industry. In these circumstances the Commissioner has correctly come to a finding that the termination of the services of these employees are due to the closure of the factory and therefore the workmen are entitled for compensation.

The Petitioners also complained that the 1st Respondent has mechanically applied the formula with regard to compensation without considering the merits of each case and without considering the capacity of the Petitioners to pay a large sum of money awarded by way of compensation. The Petitioners submitted that the financial position is a relevant factor that ought to have been taken into consideration in the award of the compensation. The Petitioners submitted that due to the heavy losses incurred by the petitioners, the Petitioners were running at a loss and that was not taken into consideration by the 1st Respondent.

The law in relation to awarding compensation in relation to termination of employment had been developed by case laws and it was held that the quantum that has to be determined by the Commissioner has to be just and equitable, and for that reason the Commissioner has to consider the age of the workman, whether the workman was gainfully employed after his services were terminated, and the capacity of the employer to pay the compensation are the matters that had to be taken into consideration in awarding compensation. But when considering these factors at different times by different Commissioners of Labour, compensations were awarded in an arbitrary manner. Taking these matters into consideration, the legislature has thought it fit to amend the law and to have a compensation formula formulated so that a uniform compensation formula will apply to all situations where compensations are

awarded to the workmen in the event of the workmen's' services are terminated in violation of the provisions of the law. Therefore, the Commissioner at present has no option but when he decides that the termination of the employment of the employees are in contravention of the provisions of the Termination of Employment of workmen (Special Provisions) Act, the 1st Respondent has to apply the formula with regard to compensation and, therefore, the Petitioners cannot challenge the said decision of the Commissioner to apply the formula and to award compensation.

In the above circumstances this court is of the view that the Petitioner has not established sufficient grounds to set aside the order of the 1st Respondent and, therefore, the court dismisses this application without cost.

President of the Court of Appeal