

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 and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. No.808/2007(Writ)

CITIALERT SECURITY (Pvt) Ltd.
No.27, Jethawana Road,
Colombo 14.

Petitioner

Vs.

1. The Commissioner General of Labour, Labour Secretariat, Colombo 5.
2. Mrs. P.I.L. Perera
Asst. Commissioner of Labour,
(Colombo North)
Labour Secretariat
Colombo 05.
3. Indrasoma Wickramasinghe,

No.110/5, Dalupatha Gardens,
Bulugahagoda,
Ganemulla.

Respondents

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Rohan Sahabandu with Dulani Werawewa,
for the Petitioners,
D.Tilakawardena SC
for the 1st and 2nd Respondents.
P.Liyanarachchi with Samalee S Arachchige
For 3rd Respondent

Argued on : 22.02.2007 *2011*

Decided on : 18.06.2012

S.Sriskandarajah,J,

The Petitioner is a company, and the 3rd Respondent worked for the Petitioner Company as a Security Officer. According to the Petitioner, the 3rd Respondent was employed by the Petitioner from 1st January 2004, and the 3rd Respondent, without any notice to the Petitioner, left the services of the Petitioner on the 19th of June 2005. This position was denied by the 3rd Respondent, and the 3rd Respondent submitted that he joined the Petitioner's company as a Junior Security Officer on 1/09/1999 and continued in service till 19th June 2005, that the 3rd Respondent had tendered his letter of resignation on 14th March 2005, and the Petitioner, in response, had by letter dated 26th March 2005, acknowledged the receipt of the said letter of resignation. In the above circumstances the 3rd Respondent had made a complaint to the Commissioner of Labour, the 1st Respondent, that his statutory dues, viz., gratuity and the E.P.F. was not

paid. To inquire into this matter the Petitioner was initially called for an inquiry on the 26th December 2006. On that day, on the request of the Agent of the Petitioner Company, the inquiry was postponed to the 9th of January 2007. On the 9th of January 2007 the Agent of the Petitioner Company requested for a further postponement to tender the relevant documents. As the Petitioner Company was not represented on the 23rd of January 2007, the Petitioner Company was informed by letter dated 19th March 2007, informing the said Company of the next date of inquiry, which was the 27th of March 2007. As the representative of the Petitioner did not submit any document on that day, both parties were informed that the inquiry would be held on the 23rd May 2007. The 1st Respondent submitted that due to the repeated absence of the Petitioner Company at the said inquiry, and its lack of corporation, that a decision was taken based on the documents submitted at the inquiry. The said decision was communicated to the Petitioner by letter dated 13th June 2007, informing that a sum of Rs.18,750/- should be paid as gratuity to the 3rd Respondent and in addition, the Petitioner Company was informed to pay a sum of Rs.4,385/- for non-payment of salary for 19 days. The Petitioner was also informed by letter dated 25th July 2007 to pay Rs.124,200/- as E.P.F.

The Petitioner Company has written a letter dated 28th of June 2007 to the Assistant Commissioner of Labour and complained that the said decision was made without a proper inquiry, and has given reasons stating that the Petitioner is not entitled to pay the said sum awarded. Thereafter, by letter of 7th July 2007, the 1st Respondent has summoned both parties to attend an inquiry to be held on 24th July 2007. Even on that day the Petitioner Company was not represented as the Petitioner has not acted with due diligence and has not participated in the inquiry, the 1st Respondent has no option but to implement the decision that was communicated.

It would appear from the proceedings that the Petitioner was afforded ample opportunity to place its position at the inquiry held before the Commissioner of Labour, but the Petitioner was not represented at the said inquiry, and the matters urged in this

application were not raised at any stage in the said inquiry. Even after the communication of the decision marked X1 and X2, on the request of the Petitioner Company, an inquiry was rescheduled with notice to both parties. Even on that date the Petitioner failed to attend the said inquiry and/or failed to present any material or document to dispute the position taken by the 3rd Respondent. In these circumstances the Petitioner cannot raise new material or file documents in a judicial review proceeding challenging the decision of the Inquiring Officer. The 1st Respondent's decision was reached on facts based on documents presented to him in an inquiry. The Petitioner was given ample opportunity to participate in the said inquiry. As such, the Petitioner cannot complain that he was not given a fair hearing by the 1st Respondent in arriving at the said decision. The decision of the 1st Respondent is based on facts presented to the 1st Respondent and hence this Court cannot interfere in the decision of the 1st Respondent and, therefore, this Court dismisses this application without cost.

President of the Court of Appeal