

**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, Mandamus  
and Prohibition in terms of Article 140 of the  
Constitution.

Ceylon Petroleum Corporation  
No.109, Rotunda Tower,  
Galle Road, Colombo 3.

**PETITIONE**

C.A. Application No.868/08 (Writ)

Vs.

1. Commissioner of Labour  
Department of Labour  
Colombo 5.  
And 02 others

**RESPONDENTS**

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

COUNSEL : D.S.Wijesinghe PC with Priyantha Jayawardana,  
for the Petitioner,  
Nuwan Peiris SC  
for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.  
Dr.Sunil F.A.Coorey with Shaminda Silva  
for the 3<sup>rd</sup> Respondent

Written submission on : 25.04.2011 (Petitioner)  
01.06.2011(Respondents)

Decided on : 15.06.2012

**S.Sriskandarajah.J,**

The Petitioner is a Corporation established under and by virtue of the Ceylon Petroleum Corporation Act No.28 of 1961. The Petitioner- Corporation, in terms of Section 6(b) of Act No.28 of 1961, is vested with the power to employ officers and servants, as may be necessary, for carrying out the work of the Corporation. The Petitioner submitted that the 3<sup>rd</sup> Respondent employee of the Corporation failed to report for work with effect from 10/10/1983. The Corporation, by its letter dated 28/10/1983, terminated the services of the 3<sup>rd</sup> Respondent with effect from 10/10/1983, as he has vacated post. On a Cabinet decision in 1994, a committee looked into the grievances of political victimization of employees of the Petitioner-Corporation and granted relief to 113 employees of the Petitioner-Corporation, including the 3<sup>rd</sup> Respondent. On the recommendation of the said committee, the 3<sup>rd</sup> Respondent was re-employed without back wages and without arrears of allowances with effect from 9/11/1995. The 3<sup>rd</sup> Respondent assumed duties on the 4<sup>th</sup> of December 1995, and continued in service until retirement on 28<sup>th</sup> of June 2007. As the 3<sup>rd</sup> Respondent was entitled for his gratuity under Section (1) of the Payment of Gratuity Act No.12 of 1983, the 3<sup>rd</sup> Respondent, at his retirement, granted a gratuity of Rs.208,379.88 calculated on the basis of the service rendered by the 3<sup>rd</sup> Respondent between 4<sup>th</sup> December 1995 and 29<sup>th</sup> June 2007. The 3<sup>rd</sup> Respondent made a complaint to the Commissioner of Labour claiming gratuity for the period between 17/05/1982 to 4/12/1995, during which period he was treated as having vacated post. The Commissioner of Labour inquired into this complaint with the assistance of the 2<sup>nd</sup> Respondent Assistant Commissioner of Labour and at the end of the inquiry the Petitioner-Corporation was directed to pay a gratuity in a sum of Rs.269,162.03 as a further gratuity payable to the 3<sup>rd</sup> Respondent by the Petitioner-Corporation between 17/05/1982 to 04/12/1995

The Petitioner in this application is challenging the said order by way of a Writ of Certiorari on the basis that the order of the Commissioner to pay gratuity for a period that the 3<sup>rd</sup> Respondent was not in services is unlawful and unreasonable. The Petitioner contended that the 3<sup>rd</sup> Respondent is not entitled to claim that he was in employment in the Petroleum Corporation between 7/05/1982 to 4/12/1995 as he was served with vacation of post notice. Section 6(2) of the Gratuity Act, provides; a workman, referred to in sub-section (1) of Section 5, shall be entitled to as gratuity a sum equivalent to half a month's wages or salary for each year of completed service at the rate of wage or salary last drawn by the workman in the case of monthly rated workmen. The Petitioner also submitted that in Section 20 of the Act, completed service means, uninterrupted service and includes service which is interrupted by the approved leave on any ground whatsoever, of strike or lock-out or cessation of work not due to any fault of the workman concerned, whether such uninterrupted service or interrupted service was rendered before or after the coming into operation of this Act.

The Petitioner contended that the 3<sup>rd</sup> Respondent did not work during the period 17/05/1982 to 4/12/1995. As such he is not entitled to any gratuity for this period as he does not have a continuous service during this period. For these reasons the Petitioner submitted that the order of the Commissioner of Labour, marked P8, is manifestly unjust and contrary to the provisions of the Gratuity Act.

The 3<sup>rd</sup> Respondent was appointed to the service of the Corporation in the year 1982 and thereafter, by a letter of the Petitioner dated 28/10/1983, his services were terminated with effect from 10/10/1983 on the basis of vacation of post. The Political Victimization Committee that was appointed in 1994 considered the complaint of various individuals. The 3<sup>rd</sup> Respondent's complaint was also considered by the said Committee and as it has found that he is a person politically victimized directed the Petitioner to re-instate the 3<sup>rd</sup> Respondent without back wages and arrears of allowances. In these circumstances the Political Victimization Committee has recognized the fact that the 3<sup>rd</sup> Respondent was unable to report for work due to

political victimization and not due to the fault of the 3<sup>rd</sup> Respondent. It is evident from the fact that when the 3<sup>rd</sup> Respondent was re-employed, that he was not placed at the initial salary of the post to which he was appointed, but he was placed at a salary point where the 3<sup>rd</sup> Respondent was placed at the time of his termination. This indicates that his employment was treated as continuous service, but his arrears of salary and allowances were not paid to him as he was not physically working in the Petitioner-Corporation during the said period. The purpose of the Political Victimization Committee is to redress the grievances of persons, who were politically victimized, and in this case the 3<sup>rd</sup> Respondent was identified as one of the persons who was politically victimized and the Petitioner-Corporation was directed to place the 3<sup>rd</sup> Respondent back in employment. The fact that the Political Victimization Committee has not recommended for the back wages does not mean that the Political Victimization Committee has only approved for a fresh employment to the 3<sup>rd</sup> Respondent. It is common practice that when an employee is not physically present and not working in an institution during a period he could be treated as on no pay leave and those who are on no pay leave are also not entitled for their salary and allowances, but that does not mean that they are not in service during that period. Considering the above facts and circumstances the Commissioner's order that the 3<sup>rd</sup> Respondent was in continuous service in the 1<sup>st</sup> Respondent-Corporation from 1982 to 2007 is justifiable, therefore, the contention of the Petitioner that the Petitioner was not in service from 17/05/1982 to 4/12/1995 has no basis. Hence, the order of the Commissioner of Labour is legal and reasonable in the given circumstances and, I dismiss this application without cost.

President of the Court of Appeal