

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

In the matter of an Application for
Mandates in the nature of Writs of
Certiorari & Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

CTV Creations Pvt Ltd.
31/1/A, Gilfred Crescent
Colombo 7.

Case No. CA (WRIT) 560/11

PETITIONER

Vs.

1. V.B.P.K. Weerasinghe,
Commissioner General of Labour,
Department of Labour,
Colombo 5.
2. P.K. Sanjeevani, Assistant
Commissioner of Labour,
Employment Termination Unit
Department of Labour, Colombo 5.
3. R.M.A. Rathnayaka, Assistant
Commissioner of Labour,
Employment Termination Unit,

Department of Labour, Colombo 05.

4. M. Priyantha Pushpakumara,
No.814/C, Vihara Mawatha,
Narangoda Paluwa, Ragama.
5. R.P. SumithKumara, Thimbiriya,
Madagama,
Bibila.
6. R.M. Suranja Janaka Rathnayake,
No.30/21/04, Mayadunna, Ampara.
7. W.A. Gihan Kalyana, No.103/1A,
Kandhahenawaththa Road,
Depanama, Pannipitiya.
8. W. Pubudu Lanka, No.174,
Udakanampella, Pugoda.
9. S.N.S.B. Ajith Semasinghe, No.978/4,
Pannipitiya Road, Thalagama
South,
Baththaramulla.
10. R.A. Widanapathirana, Morawaka
Arachchiwaththa, Pitabeddara.
11. K.V. Susantha, No.252/1,
Udawelipitiya, Nagoda, Galle.
12. E.N.T. Siriwardhana, No.95/N,
Walpola, Ruggahawila.
13. Dhammika Kumara Jayasinghe,
No.978/4, Pannipitiya Road,
Thalangama South, Baththaramulla.
14. R.M. Wasantha Bandara, No.139,
Vijitha Sewana, Batagalla,

Thalathuoya.

15. S.G.C. Dias, No.94/2, Kahanthota
Road, Malambe.

RESPONDENTS

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

COUNSEL : Dushantha Kularathna,
for the Petitioner.

M.N.B.Fernando DSG

For the Respondent

Argued on : 20.03.2013

Judgment : 06.06.2013

S.Sriskandarajah, J

The Petitioner, a company incorporated under the Companies Act of Sri Lanka and it is a subsidiary company of Ceylinco Group of Companies. It is the submission of the Petitioner that due to the financial crisis experienced by the Ceylinco Group of Companies, in or around 2009, the business of the Ceylinco Group of Companies, including the Petitioner, was badly affected and, as a result, the management of the Petitioner Company decided to offer a scheme to the employees to terminate their services. Accordingly, the 4th to the 15th Respondents' services were terminated on the 25th of March 2009. It is the position of the Petitioner that the Petitioner had offered a voluntary termination of service scheme offering the employees 3 months salary, and this was accepted by the 4th to the 15th Respondents, and this was documented by letter dated 7th of July 2009 in which these Respondents have placed their signature. It is the submission of the Petitioner that after the acceptance of the voluntary termination of service scheme by the 4th to the 15th Respondents, they have sought the intervention of

the Commissioner of Labour by their Application to the Commissioner of Labour under the Termination of Employees (Special Provisions) Act.

The Commissioner, after an inquiry, ordered for the payment of compensation and directed the Petitioner to deposit a sum of Rs.1,442,500/- to be paid to the 4th to the 15th Respondents as compensation. This order dated 28/07/2011 is challenged in this Application and the Petitioner is seeking a Writ of Certiorari to quash the said order on the basis that the termination of the 4th to the 15th Respondents was based on a voluntary termination of their service and that the Commissioner is not entitled to make order to pay compensation under the Termination of Employment of Workmen (Special Provisions) Act. Further, the Petitioner submitted that the order of the Commissioner is bad in law as the Commissioner cannot make an order to pay compensation against an existing company which has not been closed down to date.

Section 2 of the Termination of Employment of Workmen (Special Provisions Act) No.45 of 1971, as amended, provides:

2(1): No employer shall terminate the employment of any workman without:

- (a) The prior consent in writing of the workmen; or
- (b) The prior written approval by the Commissioner.

It is the position of the Petitioner that the Petitioner has got prior consent, in writing, of the 4th to the 15th Respondents, to terminate their services and, therefore, the said Respondents cannot invoke the powers of the Commissioner of Labour under the provisions of the Termination of Employment of Workmen (Special Provisions) Act. The Petitioners rely on a document marked P2(a), which document is undated and, it appears, that the said document carries a heading as "Staff Notice". It states that, due to the current financial situation of the Company, the management of the Company

consents to have a voluntary scheme of termination for permanent staff by which they would be compensated with 3 months salary, and that it was intimated to the staff members at a meeting held on 24/03/2009, and calls upon all permanent staff members to meet with the Assistant Administrative Manager before 8/04/2009, in order to plan necessary action. It appears that the names and signatures of the employees, including the 4th to the 15th Respondents, appearing at the bottom of the said document show that these Respondents have seen the said document and had made an endorsement. A reading of the said document does not indicate that it is a consent letter given by the Respondents to the effect that they are willing to accept a voluntary termination scheme and, therefore, the Petitioners cannot rely on this document to state that the 4th to the 15th Respondents, by endorsing in the said document, had voluntarily agreed for their termination of service. In these circumstances the Commissioner has rightly entertained the application made by the 4th to the 15th Respondents to inquire into the termination of their services under the Termination of Employment of Workmen (Special Provisions) Act.

The Petitioners also contended that the Commissioner cannot make an order for compensation to the unlawful termination of the services of the 4th to the 15th Respondents. As the Petitioner's Company was functioning, the Commissioner can only make an order for reinstatement with back wages and, therefore, the order to pay compensation to the said Respondents is unlawful. It is the submission of the Petitioner Company that it has offered voluntary termination of the workmen as the company was facing financial instability. In these circumstances the Petitioner Company cannot argue that the Commissioner, when making an order in relation to the illegal termination of the employees of the Petitioner Company, the Commissioner would have ordered for reinstatement with back wages. It has been held by the Supreme Court that when an order for reinstatement of a workman is impracticable, that the Commissioner could make an order for compensation in lieu of reinstatement and this order could be made under Section 6 of the Termination of Employment of Workmen (Special Provisions

Act; Lanka Multi Moulds (Pvt) Ltd v Wimalasena, Commissioner of Labour and others [2003] 1 Sri.L.R 143 Fernando J. Section 6 provides: "Commissioner may order such employer to continue to employ the workmen with effect from a date specified in such order." This section has given discretion to the Commissioner of Labour to order for reinstatement or to award compensation. In the given circumstances the Petitioner has pleaded and led evidence to show that the Company was facing financial difficulties and, therefore, it has become necessary to retrench the employees. In this background it is impracticable for the Commissioner to order for reinstatement with back wages. For the above reasons this Court is of the opinion that the Commissioner's order is legal and reasonable and, therefore, dismisses this Application without costs.

President of the Court of Appeal