

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

CA/PHC/142/2010

MC Colombo 89623/05/2006

HC Colombo HCRA 54/2007

Ceylon Petroleum Corporation,
No. 109, Rotanda Tower, Galle Road,
Colombo 03.

Respondent-Petitioner-Appellant

Vs.

E.M. Gunapala,
Assistant Commissioner of Labour,
Legal Division, Department of Labour,
Colombo 05.

Complainant-Respondent-Respondent.

BEFORE: A.W.A. Salam, J. &

Sunil Rajapakse, J.

COUNSEL : P. Radhakrishnan for the Respondent-Petitioner-Appellant and Nayomi
Kahawita SC for the Complainant-Respondent-Respondent.

ARGUED ON: 18.07.2013

DECIDED ON: 04.03.2014

A.W.A. Salam, J

This appeal arises from the order of the learned High Court Judge dated 09.12.2010. By the said judgment the learned High Court refused the application to review the order of the learned Magistrate, *inter alia* on the basis that the appellant had failed to establish the existence of exceptional circumstances. The proceedings in the Magistrate's Court commenced with the

Labour filing a certificate under Section 8(1) of the Gratuity Act No 12 of 1983 against the Ceylon Petroleum Corporation (hereinafter referred to as the Appellant) for the recovery of gratuity in respect of eight employee. The learned Magistrate after having called upon the employer the Ceylon Petroleum Corporation to show cause as to why the amount mentioned in the certificate should not be recovered as a fine, concluded that the sum mentioned in the certificate is due and proceeded to recover the same as if it is a fine imposed by him, since the employer failed to show cause against the same.

The only ground urged by the employer against the certificate was that the amount mentioned in the certificate filed by the Commissioner was ex facie wrongful in that the amount due has been incorrectly calculated. When a certificate is filed under Section 8 of the aforementioned the Magistrate's Court is under duty to call upon the defaulter to show cause as to why an order should not be made against the employer to recover the same. The learned Magistrate has complied with this requirement and the employer has not been able to show cause against the recovery the amount mentioned in the certificate. Taking in to consideration the judgment in Rustom Vs. Hapangama and Company 1978 79 2 Sri Lanka Law Report 225 and the judgment in Dharmaratne and another Vs. Palm Paradise Cabanas Ltd. CALA 1113/03, the learned High Court Judge came to the finding that the aellant has

failed to make out any exceptional circumstances warranting the invocation of the discretionary remedy.

Having considered the impugned judgment of the learned High Court Judge it is ~~not~~^{quite} clear that the employer has failed to establish an illegality, procedural defect or other exceptional circumstances that call for the intervention of the High Court. As such the appeal preferred by the Appellant in my view merits no favourable^{or} consideration. Therefore, this appeal stands dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL

Sunil Rajapakshe, J.

I agree.

JUDGE OF THE COURT OF APPEAL

NR/-