

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

CA PHC 75/2007

M.P Premasiri
Haputale

Petitioner

Vs

Commissioner of Labour
Haputale.

Respondents

CA(PHC) 75/2007

HC Ratnapura HCR/RA 61/05

MC Embilipitiya No. 54365

BEFORE : K.T. Chitrasiri, J. &
W.M.M. Malinie Gunaratne, J.

COUNSEL : Indunil Bandara for the respondent petitioner
appellant.
Suranga Wimalasena SSC for the respondents.

ARGUED &


DECIDED ON : 04.11.2014

K.T. CHITRASIRI, J.

This is an appeal seeking to set aside the decision dated 23.05.2007 of the learned High Court Judge in Ratnapura and to have the reliefs prayed for in the petition dated 15.06.2005 filed in the High Court of Ratnapura. In that petition filed in the High Court, the appellant sought to have the order dated 13.06.2005 of the learned Magistrate set aside. By the aforesaid order of the learned Magistrate, he has imposed a fine of Rs. 422,745/- considering the application made by the applicant-respondent-respondent which is dated 05.01.2005.

Upon filing the aforesaid application in the Magistrate's Court by the respondent, summons had been issued on the appellant and thereafter he was present in Court on 11.02.2005. On that date the appellant admitted the liability amounting to Rs. 422,745/- as mentioned in the said application dated 05.01.2005. Thereafter, on 30.06.2005 the learned Magistrate has imposed the aforesaid amount as a fine and the appellant was directed to pay the said sum of money by instalments amounting it to Rs. 50,000/- each. On that date itself, a sum of Rs. 10,000/- had been paid by the appellant.

Learned Counsel for the appellant in his submissions made before this Court today, argued that there had been an inquiry pending before the Commissioner of Labour in order to determine the amount due in respect of the payments of EPF to his employees. He also submitted that the employees themselves had given affidavits stating that they were not employed under the appellant.

However, nothing is found in the journal entries made by the learned Magistrate as to such an inquiry enabling the Magistrate to consider those matters except for the minute that had been made on 29.03.2005 in respect of an inquiry. Learned State Counsel submitted that there had been no such inquiry pending or held before the Commissioner of Labour. He refers to the letter dated 01.11.2004 (X 2) wherein the appellant was directed by the Assistant Commissioner of Labour to pay the EPF dues. Thereafter appellant himself has sent a letter on 08.11.2004 (X 3) in reply to the aforesaid letter dated 01.11.2004 requesting for an inquiry. Consequently, he was directed to be present on 24.11.2004 before the Assistant Commissioner of Labour in Haputale by the letter dated 17.11.2004 (X 4). However, nothing is found to establish that he was present ~~himself~~ before the Assistant Commissioner of Labour pursuant to the letter dated 17.11.2004. 

Learned State Counsel also referred to the affidavits filed by the person supposed to have been the employees of the appellant. Those affidavits have been deposed to on 11.02.2005. In paragraph 7 of the petition dated 15.06.2005 filed in the High Court of Ratnapura the appellant also has referred to those affidavits. In that paragraph 7, the appellant has stated that he has produced those affidavits at the inquiry held before the Assistant Commissioner. We observe that those affidavits have come into existence only after filing of the application by the respondent in the Magistrate's Court. Hence, it is clear that those affidavits have come into existence only after filing the application in the Magistrate's Court.

The above circumstances show that no inquiry had been held before the Commissioner of Labour even though the submissions of the learned Counsel for the appellant is to that effect. Moreover, nothing has been brought before the learned Magistrate as to an inquiry for him to consider. Significantly, the appellant, immediately after he received the summons on the very first day in Court, has admitted liability as to the payment of the EPF on behalf of his employees. Accordingly, this Court at this stage, cannot set aside the decision of the learned Magistrate considering the submissions as to an inquiry pending before the Commissioner of Labour.

For the aforesaid reasons this appeal is dismissed. Learned Magistrate is directed to collect the fine that he has imposed without giving an opportunity to pay the money in instalments. The appellant should pay the dues in one single payment. In the event the appellant fails to pay it in one single payment, the Magistrate is directed to impose a default sentence according to law.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-