

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

**C.A. (Writ) Application No. 313/2012**

Empire Bakery Stores and Cafe (Private) Ltd,  
70-72, Peradeniya Road,  
Kandy.

**Vs.**

**Petitioner**

V.B.P.K. Weerasinghe,  
Commissioner General of Labour,  
Department of Labour, Colombo

And others

**Respondents**

C.A. (Writ) Application No. 313/2012

BEFORE : K.T. CHITRASIRI, J. &

L.T.B. DEHIDENIYA, J.

COUNSEL : Lal Wijenayake for the Petitioner.

Chaya Sri Nammuni SC for the 1<sup>st</sup> & 2<sup>nd</sup>

Respondents.

3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents are present in Court.

4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> respondents are absent and  
unrepresented.

ARGUED AND

DECIDED ON : 03<sup>rd</sup> July, 2015.

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**K.T. CHITRASIRI, J.**

Heard both Counsel in support of their respective cases. The petitioner had been the owner of the business carried on by the Company named as Empire Bakery Stores and Cafe (Private) Ltd. He was directed to pay a sum of Rs.1,313,800/= as compensation to the 3<sup>rd</sup> to 8<sup>th</sup> respondents in terms of the provisions contained in the Termination of Employment (Special Provisions) Act No.45 of 1971 as amended. The order that was made to pay the aforesaid sum of money was on the basis that the petitioner was the employer of the aforesaid Company. Being aggrieved by the said decision of the 1<sup>st</sup> respondent namely, the

Commissioner General of Labour, the petitioner by this application has sought to set aside the aforesaid order of the 1<sup>st</sup> respondent.

In terms of Section 6 of the Termination of Employment of Workmen Act, permission of the Commissioner of Labour is required to terminate the employment of the employees if there were more than 15 employees under the employer. When no such permission is obtained the employees who were subjected to termination of their employment are entitled for compensation under the Act No. 45 of 1971 provided the business in which they were employed had more than 15 employees.

In this instance the Commissioner of Labour when she made the order to pay compensation to the 3<sup>rd</sup> to 8<sup>th</sup> respondents has considered the report dated 05.06.2012 submitted by the Inquiring Officer, P.K.Sanjeewani who was an Assistant Commissioner of Labour. In that report, the Inquiring Officer has considered among other things, the documents tendered at the inquiry. In that inquiry the document marked V25 filed with the petition also had been considered by the Inquiring Officer. It is an agreement by which the business ran by the petitioner had been sold to P & S Kandy (Private) Ltd. The name of this

company in that agreement is identified as Empire Bakery Stores and Cafe (Private) Ltd. Admittedly it is the name of the Company registered under the Companies Act in which the petitioner was the employer of the 3<sup>rd</sup> to 8<sup>th</sup> respondents. Therefore, it is apparent that the Bakery Stores and Cafe were considered as one entity and not as two businesses.

Moreover, the front page of the document marked V24 filed with the petition shows that the Empire Bakery Stores and Cafe Ltd. was a business which had a Check-Roll for employees that had more than 15 employees. Indeed, in the submissions filed before the inquiring officer on behalf of employer, petitioner had clearly stated that there were 18 employees in that business undertaking during the period towards the end of the year 2010.

The above circumstances show that there had been more than 15 employees under the petitioner at the time the employment of the 3<sup>rd</sup> to 8<sup>th</sup> respondents were terminated. Therefore, the petitioner being the employer of those respondents is liable to pay compensation in terms Act No. 45 of 1971 to those employees whose services were terminated.

In the circumstances, we do not see any error on the part of the Commissioner when she decided that there were more than 15 employees employed under the petitioner at the time the Company changed hands, as a result of the agreement marked V25. Therefore, we are not inclined to interfere with the impugned decision dated 17.7.2012 of the 1<sup>st</sup> respondent. For the aforesaid reasons this petition is dismissed without costs.

*Petition dismissed without costs.*

JUDGE OF THE COURT OF APPEAL

**L.T.B. DEHIDENIYA, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

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