

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

In the matter of a Revision
Application under and in terms of
Article 138 of the Constitution read
with Article 154P (3)(b) of the
Constitution.

The Commissioner of Labour,
Labour Department,
Colombo 05.

CA (PHC) APN 113/2013
High Court of North-Central Province
Case No.26/12
Anuradhapura Magistrate Court
Case No. 18459

Plaintiff

Vs.

Samadeepa Samaja Kendraya
District Centre,
Jayanthi Mawatha,
Anuradhapura.

Defendant - Petitioner

AND

Samadeepa Samaja Kendraya
District Centre,
Jayanthi Mawatha,
Anuradhapura.

Defendant-Petitioner

Vs.

The Commissioner of Labour,
Labour Department,
Colombo 05.

Plaintiff-Respondent

And now (by and between)

Samadeepa Samaja Kendraya
District Centre,
Jayanthi Mawatha,
Anuradhapura.

Defendant-Petitioner-Petitioner

Vs

The Commissioner of Labour,
Labour Department,
Colombo 05.

Plaintiff-Respondent-Respondent

**BEFORE: W.M.M. Malinie Gunaratne, J. &
P.R. Walgama, J.**

**COUNSEL: Nuwan Bopage for Petitioner
Suranga Wimalasena S.S.C. for Respondent**

Argued on : 24. 06. 2015

Written submissions filed on : 28.09. 2015 and 28.10.2015

Decided on: 03.11.2015

Malinie Gunaratne, J.

Proceedings were instituted on 06/05/2011 by the Plaintiff – Respondent (hereinafter referred to as the Respondent) against the Defendant – Petitioner (hereinafter referred to as the Petitioner) before the learned Magistrate of Anuradhapura, for the recovery of a sum of Rs.176,625/- as gratuity payable to one Anula Herath who was an employee of the Petitioner, in terms of Section 8(1) of the Payment of Gratuity Act.

The Petitioner sought leave of the learned Magistrate to show cause that the sum referred to in the certificate is not due from the Petitioner. The Respondent objected to the application made on behalf of the Petitioner.

However, the Petitioner filed his objections and after consideration of the submissions made by both parties, the learned Magistrate ordered the Petitioner to pay Rs.176,625/- as referred to in the certificate.

Being aggrieved by the said Order of the learned Magistrate the Petitioner preferred a Revision Application to the High Court of the province seeking to set aside the said Order of the learned Magistrate.

The learned High Court Judge affirmed the Order of the learned Magistrate and dismissed the Petitioner's petition.

Being aggrieved by the said Judgment of the learned High Court Judge, the Petitioner has preferred the instant application seeking to revise it.

The case for the Petitioner briefly was, one Anula Herath, who was purported to be an employee of the Petitioner made an application to the

Commissioner of Labour to recover gratuity from the Petitioner. The Respondent, after holding an inquiry, ordered to pay Rs.176,625/- to the said Anula Herath.

After proceedings were instituted before the learned Magistrate for the recovery of the above mentioned sum of money, the Petitioner sought leave of the Court to show cause that he is not liable to pay the money which is mentioned in the certificate.

The learned Magistrate after consideration of the submissions made by both parties held, that the only cause that the Petitioner could have shown was to establish:

- i) that the Petitioner has paid the amount due,
- ii) that he is not the defaulter named in the certificate, and
- iii) that the certificate has been filed in the Court which has no jurisdiction to initiate recovery proceedings,

and refused the application made by the Petitioner to show cause that the sum mentioned in the certificate was not due or that it was incorrectly calculated.

The Petitioner seeks to canvass the correctness of the Order made by the Magistrate refusing the application made on behalf of the Petitioner to show cause that the sum specified in the certificate was not due or incorrectly calculated.

When the case was taken up for argument on 24.06.2015, the learned Counsel for the Petitioner submitted that according to the Section 8(2) of the Payment of Gratuity Act, the Commissioner's certificate is **prima facie**

evidence, only if it has been duly calculated. If the calculation is wrong the certificate cannot be considered as a **prima facie** evidence of payment of gratuity.

The sole question arising for decision in this application is whether the certificate filed by the Respondent under Section 8(2) of the Payment of Gratuity Act is final and conclusive.

Section 8(2) reads as follows:

(2) The Commissioner's certificate shall be **prima facie evidence** that the amount due under this Act from the defaulter has been duly calculated, and that the amount is in default.

The contention of the learned Counsel was that the legislature by using the words "the Commissioner's certificate shall be **prima facie evidence**", a provision has been made for the defaulter to show cause and displace the effect of the **prima facie evidence** by offering further evidence of an inconsistent or contradictory nature.

The learned Counsel for the Petitioner, in support of his contention has cited the case X Employer vs. Deputy Commissioner of Labour and Others (1991) 1 SLR page 222. In this connection the reasoning adopted in that case would be helpful in resolving the question in issue.

As Gunasekera J. pointed out in that case, thus the legislature by using the words that the certificate is only "prima facie evidence" by unequivocal and unambiguous language has made provision for the defaulters to show cause and displace the effect of the prima facie evidence by offering further evidence of an inconsistent or contradictory nature.

“Prima facie evidence is not conclusive evidence, it is open to the opposing party to rebut that evidence by proving the contrary”. G.L. Pieris – Law of Evidence in Sri Lanka 1974 Edition at Page 31 dealing with prima facie evidence and conclusive evidence states thus: Further states “The distinguishing characteristics of prima facie evidence is that it leaves room for the other party to displace effect of such evidence by offering further evidence of an inconsistent or contradictory nature. It is only in the absence of further evidence from the other side that prima facie evidence enables the party giving it to discharge its onus”.

On the strength of the above decision, it is evident that the certificate issued by the Respondent, under Section 8(2) of the Payment of Gratuity Act is only prima facie evidence and not final and conclusive evidence. Also it is not limited to show that the Respondent has paid the amount due, he is not the defaulter named in the certificate and the certificate has been filed in the Court which has no jurisdiction to institute recovery proceedings.

In arriving at their decisions, learned Magistrate and the learned High Court Judge had relied on the decision of Attorney General vs. City Carriers Ltd. (1991) 1 SLR 227. It is relevant to note in that case, proceedings were instituted and the certificate was filed under Section 38(2) of the Employees Provident Fund Act, No.15 of 1958 as amended by Act No. 8 of 1971. Section 38(3) of the said Act states:

“the correctness of any statement of the certificate issued by the Commissioner for the purpose of this section shall not be called in question or examined by the Court in any proceedings under this section and accordingly nothing in this section shall authorise the Court to consider or

decide the correctness of any statement in such certificate and the Commissioner's certificate shall be sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default".

The Section dealing with the recovery provision in the statute that came up for consideration in that case was different. Finality and conclusiveness is given by the statute to the particulars given in the certificate filed under Section 38(3) of the said Employee's Provident Fund Act.

In the instant case, the particulars given in the certificate is only prima facie evidence of the matters stated therein. It is relevant to note that there is no statutory bar under the Payment of Gratuity Act to prevent a Magistrate from leading evidence to call in question the correctness of the statement contained in the certificate.

A careful examination of Section 8(2) of the Payment of Gratuity Act clearly shows that the Commissioner's certificate is prima facie evidence. In such circumstances and in the light of the judicial decisions the view of the Court is, it is open to the Petitioner to rebut that evidence by proving the contrary.

The learned Senior State Counsel also conceded that there are defects of the calculation and submitted that he has no objection for having a fresh inquiry.

For the reasons stated above, I am of the view, the particulars given in the certificate is only prima facie evidence of the matters stated therein and it

is open to the defaulter to contravene the position that the amount has been incorrectly calculated, by leading oral or documentary evidence.

Accordingly, I set aside the Orders made by the learned Magistrate and the learned High Court Judge and direct the learned Magistrate to permit the Petitioner to show cause by leading evidence, that the amount referred to in the certificate or any part thereof is not due.

Application allowed.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Application allowed.