

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

**In the matter of an Application for a mandate in the
nature of *Writ of Certiorari* under article 140 of the
Constitution of the Democratic Socialist Republic of
Sri Lanka**

Master divers (Pvt) Ltd,
Maritime Center,
No. 234, Galle Road,
Colombo 03.

PETITIONER

C.A. Writ 391/2014

Vs,

1. V.B.P.K. Weerasinghe,
The Commissioner General of Labour,
2. L.T.G.D. Darshana,
The Assistant Commissioner of Labour,
(Colombo East)
3. M. Gunasekara,
Labour Officer, District Labour Office,
Colombo 05.
4. W.R.L. Rohana,
Senior Labour Officer,
District Labour Office,
Colombo 05.

5. A.H.L Rupika Padmini,
Labour Officer,
District Labour Office,
Colombo 05.

6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

And now between

R.K.D. Pushpanie Chandralatha Wijeratne,
No. 18, Samagi Mw,
Maharagama.

INTERVENIENT –PETITIONER

Vs,

Master divers (Pvt) Ltd,
Maritime Center,
No. 234, Galle Road,
Colombo 03.

PETITIONER-RESPONDENT

And,

1. V.B.P.K. Weerasinghe,
The Commissioner General of Labour,
2. L.T.G.D. Darshana,
The Assistant Commissioner of Labour,
(Colombo East)
3. M. Gunasekara,
Labour Officer, District Labour Office,
Colombo 05.

4. W.R.L. Rohana,
Senior Labour Officer,
District Labour Office,
Colombo 05.
5. A.H.L Rupika Padmini,
Labour Officer,
District Labour Office,
Colombo 05.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS- RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA)**

Counsel: K.G. Jayasinghe with K.P.Thissa Karunanayake for the Petitioner

Manoj de. Silva for the Intervient-Petitioner

Anusha Samaranayake DSG for the Respondents

Inquiry on: 23.11.2015

Written Submissions on: 24.02.2016

Order on: 17.06.2016

Order

Vijith K. Malalgoda PC J

Petitioner - Respondent to the present application has come before this court seeking inter-alia

- (b) Grant and issue a mandate in the nature of writ of Certiorari to quash the decision made by the 1st, 2nd, 4th and the 5th Respondents to continue with the inquiry in respect of the complaint made in **P3** by late Mr. Wijarathne disregarding the submissions made in **P17** and **P18** by the Petitioner Company
- (c) Grant and issue a mandate in the nature of writ of Certiorari to quash the decision made by the 2nd Respondent to direct the Petitioner Company to pay Rs. 4,521,000.00 as Employee's Provident Fund contribution to late Mr. Wijarathne for the period of February 1994 to February 2012 within a period of 14 days.
- (d) Grant and issue a mandate in the nature of writ of Certiorari quashing the decision made in **P19** by the 2nd Respondent to deposit Rs. 1,872,000/- to the credit of "Assistant Labour Commissioner, Colombo East" as gratuity payment to late Mr. Wijarathne.

As observed by this court the impugned decisions made by the 1st - 5th Respondents referred to above was a decision taken by the said Respondents,

- a) Directing the Petitioner-Respondent to pay Rs. 4, 521, 000/- as Employees Provident Fund contribution to one Madawala Kankanamlage Lionel Wijerathne.
- b) Directing the Petitioner -Respondent to deposit Rs. 1, 872, 000/- with the 2nd Respondent being the gratuity payment to the said Madawala Kankanamlage Lionel Wijerathne.

The intervenient Petitioner R.K.D. Pushpanie Chandralatha Wijerathne, the wife of the said Madawala Kankanamlage Lionel Wijerathne had complained before this court that her husband who was an

employee of the said Petitioner-Respondent and the beneficiary from the said impugned orders had died pending the said decision and the Intervient Petitioner being the widow had sought intervention to the present application.

It is further revealed from the material placed before this court that late Mr. Wijerathne after the alleged dismissal of his service had filed action against the Petitioner – Respondent in the Labour Tribunal and also complained to the Commissioner of Labour of the non- payment of his gratuity and Employees Provident Fund contributions. Whilst the said matters were pending, the said complainant Wijerathne has passed away on 17th February 2013 but the said inquiry proceeded before the 2nd Respondent. At the conclusion of the said inquiry the impugned orders were made by the 2nd Respondent directing the Petitioner to pay Rs. 4, 521,000.00 as Employees Provident Fund contributions for the deceased employee and deposit Rs. 1, 872,000.00 with the second Respondent being the gratuity payment to the deceased employee.

Intervient Petitioner has complained that the Petitioner has not made her a party to the present application and she being the mother of two young girls who are totally dependent on the earnings of their late father, she is entitled to be represented before this court to make submissions on behalf of her late husband. In her submissions the Intervient Petitioner has further submitted that the Petitioner who has objected to her intervention in the present case, has not objected her application to intervene in the Labour Tribunal proceedings.

In the absence of specific provision in the Court of Appeal Rules for permitting intervention, the Courts are reluctant to permit intervention unless the intervenient parties can satisfy that the said party is a necessary party to the application.

In the case of *Mahanayaka Thero; Malwattu Vihara V. Registrar General (1938) 39 NLR 186* the Supreme Court allowed intervention by a third party and in his Judgment Soertsz (J) observed that the expelled priest was permitted to intervene “ as he was vitally concerned in the matter.”

In the case of *L.U.P. Jayawardene V. Minister of Health and others* [CA Writ application No: 978/2008 – CA minutes of 21.05.2009]. Anil Gooneratne J, observed,

“What the Court at their point of time need to consider is whether the intervenient party is a necessary party and having such party in the case would in all circumstances assist court in considering the merits and the demerits of the application before Court. I find that GMOA like the other party seeking to intervene has some interest in the transfer scheme of medical officers and it would be necessary to consider its view to arrive at a correct decision...”

As observed in the said cases the intervention was allowed only when the intervenient party satisfied the Court that the said party is a necessary party to the application and/or would in all circumstances assist court to come to a correct decision.

When considering the circumstances under which the Intervenant –Petitioner has come before this Court we observe that the Intervenant Petitioner being the wife of the deceased employee is an interested party but failed to satisfy that she is a necessary party and/or a party which can assist the Court to come to a correct decision. As observed by us the parties to the inquiry conducted are properly represented before Court and the said parties are sufficient to assist this Court for proper administration of justice and adjudication of the matter before Court.

For the reasons set out above I see no reason to permit intervention in this case. I therefore make order refusing the application by the Intervenant Petitioner for intervention.

Application for intervention refused.

PRESIDENT OF THE COURT OF APPEAL