

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

*In the matter of an Application for an
order in the nature of Writ of Certiorari
in terms of Article 140 of the
constitution*

C A (Writ) Application No. 115/ 2014

S K N Tec Lanka (private) Limited.,
No. 167, Sri Rathanaiothi
Sarawanamuththu Mawatha,
Colombo 13.

PETITIONER

-Vs-

1. Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
Colombo 08.

2. Assistant Commissioner of Labour
District Labour Office,
Puttalam.
3. Warnakulasooriya Lakshika
6th Mile Post,
Ismail Puram,
Puttalam.
4. Liyana Ralalage Sunethra Kumari
Mailankulama,
Ismail Puram,
Puttalam.
5. Hettiarachchilage Samanthi Pushpalatha
Mailankulama,
Ismail Puram,
Puttalam.
6. Gamaralalage Nirmala Somasiri
Mailankulama
Ismail puram
Puttalam.
7. Lorence Nimali Charika Gomez
Puthabbowa,

Pradeepagama,
Thewanuwara.

8. H B M Sriyani Jayalath Menike
Mailankulama,
Ismail puram,
Puttalam.

9. H M Dilani Madumali Herath
Mailankulama,
Ismail puram,
Puttalam.

10. Gamaralalage Premasiri Ananda,
Mailankulama,
Ismail puram,
Puttalam.

11. Maduwanthi Malsha Chandrasena,
Mailankulama,
Ismail puram,
Puttalam.

RESPONDENTS

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

P. Padman Surasena J

Counsel: Mahanama De Silva for the Petitioner

Priyantha Nawana SDSG for the 1st & 2nd Respondents

3rd - 11th Respondents are absent and unrepresented.

Argued on: 2016-06-13

Decided on: 2016-08-10

JUDGMENT

P Padman Surasena J

The Petitioner in these proceedings seeks an order in the nature of a writ of Certiorari to quash the decision marked **Y 6** in which the 1st Respondent had ordered the Petitioner to reinstate with back wages, 9 workmen of the Petitioner company. 3rd - 11th Respondents are the said 9 workmen.

Learned counsel for the Petitioner advanced two arguments.

They are:

- I. that for the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (as amended) to apply, there must be a termination of service in terms of section 6 of the Act,

II. that there is no evidence to establish a termination of service of the 3rd - 11th Respondents by the Petitioner.

In order to evaluate the above arguments, it would be necessary to refer to the sequence of events occurred at the inquiry.

The letter marked **Y 1** has been sent to the Petitioner by the Assistant Commissioner of Labour informing him that a formal inquiry with regard to the complaints made by the 3rd - 11th Respondents would be held at 10.00 AM on 2013-11-08. The said notice has clearly explained to the Petitioner that he is afforded the opportunity of placing whatever the material on his behalf at the said inquiry.

1st and 2nd Respondents have produced a copy of the proceedings pertaining to this inquiry marked **1 R 1**. It could be seen that a Superintendent of the estate, S M Sumedha Silva had been present on 2013-11-08 at the said inquiry. He had made a statement before the inquiring officer. Even in that statement he is not specific whether the services of the 3rd - 11th Respondents have been terminated by the Petitioner or not. He has just narrated an incident. It is also not clear from that statement whether he indeed represented the Petitioner. This aspect assumes some importance because the Petitioner is a company.

On behalf of the 3rd - 11th Respondents, 8th Respondent and the 7th Respondent have made statements before the inquiring officer. 7th and 8th Respondents in their statements, have spoken to the incident pertaining to the termination of their services by the Petitioner.

It is pertinent to note that the said Superintendent of estate is on record as saying before the inquiring officer that he is not prepared to take the 3rd - 11th Respondents back to their employments.

It has to be observed that at no stage the said Superintendent of estate S M Sumedha Silva has taken up a specific position that the Petitioner did not terminate the services of 3rd -11th Respondents.

Further when the 2nd Respondent attempted to settle this dispute between the Petitioner and the 3rd -11th Respondents, said Superintendent of the estate who presumably represented the Petitioner had categorically stated that the Petitioner is not ready to give them, their jobs back.

It could be seen from the record of the proceedings of the inquiry held on 2013-11-08 that the inquiring officer was not satisfied whether in fact said Superintendent of estate had represented the Petitioner. The inquiring officer has therefore informed him to produce a letter of authority from the Petitioner company.

Inquiring officer at the end of the proceedings of that day has also explained to both parties regarding the provisions of the Termination of Employment (special provisions) Act and had explained that the parties have the opportunity of submitting any material they wish either orally or in written form, for consideration by the inquiring officer.

3rd - 11th Respondents at that time had stated to the inquiring officer that they would take steps to submit affidavits for the consideration by the

inquiring officer. The inquiring officer at the end of the proceedings of that day had fixed the further inquiry for 2013-11-22.

Learned Senior Deputy Solicitor General brought to the notice of this court, the documents marked **Y 3**, **Y 4**, **Y 5** to establish that the Petitioner had not thereafter participated in the inquiry.

Inquiring officer by the document dated 2013-11-22 marked **Y 3** has informed the Petitioner

- I. that the Petitioner had not participated in the inquiry on 2013-11-22
- II. that he has not provided any excuse for his absence
- III. that the 3rd - 11th Respondents had submitted affidavits for the consideration of the inquiring officer
- IV. to submit his material on or before 2013-12-11
- V. that further inquiry with regard to this matter would be held on 2013-12-11 at 10.00 AM.
- VI. that he is notified to participate in that inquiry
- VII. that the inquiring officer would have to make a finding on the available material, in case he does not take steps either to participate in the inquiry or to adduce any material for the inquiry
- VIII. to produce a letter of authority from a Director of the company.

It is pertinent to note that the copies of the affidavits submitted by the 3rd - 11th Respondents have also been annexed to this letter and sent to the Petitioner by the inquiring officer.

In the affidavits filed by the 3rd - 11th Respondents the details pertaining to their employer, date of their appointment, their designation, date of

termination of their service; salary they had received at the time of termination of service, number of employees under the employer have been adduced.

The argument advanced by the learned counsel for the Petitioner is that the material adduced by the 3rd - 11th Respondents before the inquiring officer is not sufficient to establish that there has been in fact a termination of services of 3rd - 11th Respondents.

However, perusal of the material produced before this court would clearly show that if there is any insufficiency of material that insufficiency would be to establish the claim of the Petitioner that he had at no stage terminated the services of 3rd - 11th Respondents. Best evidence with regard to this aspect must come from the Petitioner as the employer. However, for the reasons best known to him, the Petitioner had not taken any step to adduce any material before the inquiring officer.

The Petitioner in his petition has not averred the ground upon which he seeks to quash the decision contained in the document marked **Y 6** by a writ of Certiorari.

Nature of the writ jurisdiction of this court is different from that of its appellate jurisdiction. At this stage we cannot and we should not be sitting in appeal against the impugned decision of the 1st Respondent.

The inquiry that was conducted by the 1st and 2nd Respondents has been conducted with due regard to the observance of the rules of natural justice. There is no procedure laid down in the statute as to how one should conduct such an inquiry. The second Respondent has adopted a

procedure which appear to have been appropriate under the given circumstances. Learned counsel for the Petitioner did not complain against the procedure so adopted.

In these circumstances and for the foregoing reasons we see no basis as to why the decision contained in the document marked **Y 6** should be quashed by a Writ of Certiorari. Therefore we decide to dismiss this application. No cost is ordered.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL