

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

In the matter of an application for
Writs of Certiorari and Mandamus in
Terms of Article 140 and 143 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Lakshman Dharmapriya Perera
Samaraweera Gunathilake
No. 60, Kirindiwita,
Gampaha

Petitioner

Vs.

C.A (Writ) Application No: 347/12

- 1 The Secretary.
J.L.U. Wijeweera
Ministry of Labour, 2nd Floor,
Narahenpita Colombo 05.
- 2 The Commissioner General of
Labour,
Perl Weerasinghe,
Department of Labour, 3rd Floor,
Narahenpita Colombo 05.

- 3 Assistant Commissioner of Labour,
L.T.G.D Darshana,
Colombo (East), 5th Floor,
Department of Labour, 3rd Floor,
Narahenpita Colombo 05.
- 4 Assistant Commissioner of Labour
(Public Relations)
Kumari Jayarathne
Department of Labour, 3rd Floor,
Narahenpita Colombo 05.
- 5 Hon. Attorney General.
Attorney General's Department,
Colombo 12.

Respondents

BEFORE : L.U Jayasuriya J.
Deepali Wijesundera J.

COUNSEL : Petitioner present in person.
Indula Ratnayake for the Respondents

ARGUED ON : 23rd September, 2016

DECIDED ON : 25th November, 2016

L.U Jayasuriya J.

The Petitioner invoked the Writ Jurisdiction of this court seeking:

- a. A Writ of Certiorari to quash the decision of the 2nd Respondent dated 05.04.2012.
- b. A Writ of Mandamus Directing the 1st, 2nd, 3rd and 4th Respondents to implement the recommendations and directions contained in the documents marked P1, P9, P10, P12 and P13 amongst other reliefs.

The Petitioner had joined ComputerLand (PVT) Ltd. as an Assistant Stock keeper in 1991 and had risen in the ranks to eventually become the General Manager. His services were then terminated by his employer.

Subsequently the Petitioner has filed an application in the Labour Tribunal and subsequent to an exparte inquiry being held, the Learned President of the Labour Tribunal has awarded a sum of Rupees 900,000/- as compensation to the Petitioner by the order dated 06.06.2007 as evidenced by the document produced marked P1.

According to the Document produced marked P1 by the 1st to 4th Respondents, the winding up proceedings were commenced against ComputerLand (PVT) Ltd. on 26th September 2005 based on a Petition presented by H.T.N Information Systems (PVT) Ltd.

The president of the Labour Tribunal has stated in his order dated 06.06.2007 that ComputerLand (PVT) Ltd. was under liquidation. Therefore, this court is of the view that the Tribunal didn't have Jurisdiction to entertain the application in view of the provisions of Section 264 of the Companies Act No. 17 of 1982 which reads as follows:

“When a Winding-Up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the Company except by leave of the Court and subject to such terms as court may impose.”

The Petitioner has produced Winding-Up proceedings dated 25.02.2011 marked P14 but has suppressed the fact that those proceedings were instituted on 26.09.2005. This application can be dismissed on that ground alone.

In view of Section 264 of the Companies Act the 2nd Respondent is estopped from filing proceedings in the Magistrates Court to recover the dues from ComputerLand (PVT) Ltd. under the Employees' Provident Fund Act No.15 of 1998.

It was held in **East West Research & Design (PVT) Ltd. V. Weerakoon Commissioner of Labour 1993 ISLR 191** that: “The bar imposed by Section 264 can only be removed by the Court before which the Winding-Up is pending.”

However the 2nd Respondent has intervened in the Winding-Up proceeding in case No. 186/CO by submitting an affidavit as evidenced by the document produced marked R3. It appears from the proceedings that those dues were not settled in full due to the inefficiency of funds.

This court is of the view that the main relief sought by the Petitioner cannot be granted as he has failed to produce the decision alleged to have been made by the 2nd Respondent on 05.04.2012 for the perusal of the court.

This court now moves to deal with the contents of the Documents marked P9, P10, P12 and P13 respectively.

P9 is a response by the 1st Respondent to the parliamentary Advisory Committee dated 05.09.2008 and does not contain any recommendation or a direction and therefore this Court cannot grant any relief considering the same. However, P9 indicates that the claim is included as a liability in the Winding-Up proceedings in Case No. 186/CO.

P10 contains certain recommendations of the Human Rights Commission and no Statutory Duty is conferred upon the Respondents to implement the recommendations of the Human Rights Commission.

P12 and P13 are letters addressed to the Secretary to the President by the Director General of the Presidential Investigation Unit. As the Secretary to the President is not a party to this application this court is unable to make any order pertaining to P12 and P13.

This court holds that the application is misconceived in Law as none of the mandates sought by the Petitioner can be issued.

For the foregoing reasons, this application is dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL