

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

*In the matter of an Application for
mandates in the nature of writs of
Certiorari and Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

CA (Writ) Application

No. 227 / 2014

Shantha Ranawana,

Proprietor,

Inter Freight Forwarding Service,

No. 44,

Mudalige Mawatha ,

Colombo 01.

PETITIONER

Vs

[1] W J L U Wijeweera,
Commissioner General of Labour
(Acting),
Department of Labour,
Narahenpita,
Colombo 05.

[1A] Herath Yapa,

Commissioner General of Labour,
Department of Labour,
Narahenpita,
Colombo 05.

[1B] M D C Amarathunga
Commissioner General of Labour,
Department of Labour,
Narahenpita,
Colombo 05.

[2] G W N Viraji
Deputy Commissioner of Labour,
Termination Unit,
Department of Labour,
Narahenpita,
Colombo 05.

[3] P E C Cooray
Inquiry Officer,
Colombo District - Colombo South
Department of Labour,
Narahenpita,
Colombo 05.

[4] K H N D Gunarathne,
No. 209/1,
Old Kottawa Road,
Mirihana,
Nugegoda.

RESPONDENTS

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

P. Padman Surasena J

Counsel: Kamran Aziz with Ershan Ariaratnam for the Petitioner

Chaya Sri Nammuni, SC for the Respondents

Argued on : 2016-06-06

Written submissions: on behalf of the Petitioner filed on 2016-07-26,

on behalf of the 1st, 1A, 2nd and 3rd Respondents
filed on 2016-08-03.

Decided on: 2016-11-21

JUDGMENT

P Padman Surasena J

Upon 4th Respondent making an application to the Commissioner of Labour on 2013-08-27 alleging that his service was unlawfully terminated by the Petitioner, the 3rd Respondent (Deputy Commissioner of Labour) has held an inquiry in terms of the provisions of the Termination of Employment of Workmen (Special Provisions) Act (hereinafter referred to as the "Act").

It is the position of the Petitioner that the service of the 4th Respondent was terminated by him as his performance was unsatisfactory. The Petitioner relies on the letter dated 2013-04-10 produced marked **X 3**.

It is the position of the Petitioner that the 4th Respondent was employed as a Management Trainee with effect from 2012-08-14 with a probationary period of six months. However the Petitioner has failed to produce any letter of appointment to this effect.

It is also the Petitioner's position that the said period of probation was extended by another six months from 2013-02-21 by the letter marked and produced as **X 2**.

Main ground which the Petitioner relied upon to justify his action of termination of service of the 4th Respondent is the position that

the Petitioner is entitled to terminate the service of the 4th Respondent without any notice since the 4th Respondent was under a period of probation.

It is important to note that the document marked **X 2** upon which the Petitioner fully relies, to establish that the 4th Respondent was under a period of probation had never been submitted by the Petitioner before the 2nd Respondent at the inquiry. The Petitioner has failed to adduce any reason for non production of this letter at the said inquiry. This fact must be viewed with the fact that there is also no letter of appointment issued to the 4th Respondent.

This is an application for mandates in the nature of writs of Certiorari and Prohibition in terms of Article 140 of the Constitution. Thus the task of this court is to ascertain whether the impugned decision of the 1st Respondent contained in the document marked **X 13** is ultra-vires, unreasonable, irrational, arbitrary or whether there is an error on the face of the record as claimed by the Petitioner¹.

It has been stated by this Court in the case of Jayawardena and another Vs Pegases Hotel of Ceylon Ltd and others (2004 (2) S L R page 39) as

¹ paragraph 40 of the written submissions filed by the Petitioner

follows; "..... In this context it is necessary to observe that the Commissioner of Labour is not bound in the course of an inquiry under the Termination of Employment (Special Provisions) Act to "make all such inquiries" like an Arbitrator to whom a dispute is referred under section 4(1) of the Industrial Disputes Act whose role was examined by this Court recently in Sukumaran V The Maharaja Organisation and two others.²The Commissioner of Labour has to act on the evidence presented to him in the course of the inquiry....."

Since the document marked **X 2** was not produced in the course of the inquiry for the reasons best known to the Petitioner, this Court cannot form an opinion that the decision contained in the document marked **X 13** belongs to one of the categories claimed by the Petitioner referred to above.

Indeed the evidence available before the inquiry officer is some evidence to the contrary (letter dated 2013-08-05 marked **X 2** and produced at the inquiry which has stated that the 4th Respondent was a permanent employee).

² CA No. 1684/2003 decided on 2004-08-30

It is the position of the Petitioner that the 4th Respondent's employment has been terminated on disciplinary grounds and hence, the provisions of section 2 (4) of the Termination of Employment of Workmen (Special Provisions) Act No. 05 of 1971 as amended, will not apply and therefore the Commissioner of Labour does not have jurisdiction to hear and determine the application made by the 4th Respondent.

Section 2 (4) of the Act is as follows:

"For the purposes of this Act, the scheduled employment of any workman shall be deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workman in such employment are terminated by his employer, and such termination shall be deemed to include-

- (a) non-employment of the workman in such employment or his employer, whether temporarily or permanently, or
- (b) non-employment of the workman in such employment in consequence of the closure by his employer of any trade, industry or business."

The Petitioner cannot be said to have satisfied the inquiry officer that the service of the 4th Respondent was terminated "by reason of a punishment imposed by way of disciplinary action".

In these circumstances, we see no basis as to why the decision contained in the document marked **X 13** should be quashed by a Writ of Certiorari. Therefore we decide to dismiss this application.

We make no order for costs.

Application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL