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 Prohibition, Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. L.J.K. Hettiarachchi
   No. 28/3, De Fonseka Place
   Colombo 05.
2. H.G. Fonseka
   No. 28/2, De Fonseka Place
   Colombo 05.

PETITIONERS

C.A. Writ Application No. 280/2012

Vs

1. Pearl Weerasinghe
   The Commissioner General of Labour
   Labour Secretariat
   Department of Labour
   Narahenpita, Colombo 05.
2. Mr. L.T.G.D. Dharshana
   Assistant Labour Commissioner
   Labour Secretariat
   Department of Labour
   Narahenpita, Colombo 05.
3. Mr. M.A. Dhanawardane
   Labour Officer
   Labour Secretariat
   Department of Labour
   Narahenpita, Colombo 05.

4. Walker Son and Company Limited
No. 18, St. Michael's Road
Colombo 03.

RESPONDENTS

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

COUNSEL : Mohamed Adamaly with
Roshan Hettiarachchi and
J. Abeysundera for the Petitioners
S. Parathalingam PC with
Mrs. Sashini Wakwella for the
4th Respondent.
Neil Unamboowa Senior DSG
For the 1st – 3rd Respondents.

ARGUED ON : 09th August, 2016

DECIDED ON : 13th February, 2017

Deepali Wijesundera J.

The first and second petitioners have filed this application praying for a writ of certiorari to quash the notice dated 12/07/2012 (marked **P10**) and to quash the order made by the third respondent on 07/08/2012 and also for a writ of prohibition to prohibit the first, second and third respondents from conducting further inquiry in respect of the petitioners. The petitioners have also prayed for a writ of Mandamus to compel the

first, second and third respondents to take prompt action to recover on behalf of the petitioners sums awarded by the determination in **P7.**

The first and second respondents have been Director and Chairman of the fourth respondent company. They both have resigned from their respective designations on the 31st of May 2007. The petitioners have complained to the first and second respondents for non payment of gratuity. The third respondent a representative of the first respondent had summoned them for an inquiry and has recorded their statements. After the said inquiry the second respondent had issued letters to the fourth respondent in terms of Payment of *Gratuity Act no. 12 of 1983* to pay gratuity to the petitioners. The petitioners states that the fourth respondent failed to comply with the order of the second respondent to pay the said money to them and that they informed the first respondent to take steps to enforce the determination made by the second respondent. These letters were marked as **P1 to P11** by the petitioners. The petitioners and the fourth respondent were thereafter summoned to another inquiry by the third respondent on the 07th of August 2012. The petitioners have filed the instant application to stop the first to third respondents from conducting a further inquiry.

The learned counsel for the petitioners argued that the respondents upon making their determination as required by law after a comprehensive inquiry can not review their own determination. The petitioners stated that the respondent's attempt to reopen the inquiry after the fourth respondent made representations to the Secretary to the Minsitry of Labour, tantamounts to an interference and invasion of the rule of law.

The petitioners further stated that if a party is dissatisfied with a determination of the first to third respondents made under the Payment of *Gratuity Act* after inquiry the only remedy available to that party is to make an appeal to this court by way of a writ application.

The petitioners' counsel argued that the first respondent is a quasi-judicial officer who makes binding orders and that the first respondent duly made such an order which he can not review. The petitioners cited the judgments in **Gould vs Bacup Local Board (1881) 50 LJMC 44 and Livingstone vs Westminster Cpn (1904) 2 KB 109, Nadaraja Limited vs Krishnadasan (1975) 78 NLR 255, Aislaby Estate Ltd vs V. Weerasekera 77 NLR 241, Horana Plantations PLC vs Minister of Labour CA (Writ) 136/2010** and stated that once an award is made the

first respondent ceases his involvement in the said application and he can not make any direction in the same matter.

The petitioners stated that the dictation by the Secretary to reopen the inquiry is unlawful. They cited the judgment in **Samadasa vs Wijeratne, Commissioner General of Excise et al (1999) 2 SLR 85.**

The learned Deputy Solicitor General for the first to third respondents submitted that the inquiry proceedings were centered on EPF payments and the decision on gratuity was made without a proper perusal of documents, facts and circumstances in the present case where the complainants were directors and shareholders of the company who later sold the company to the present owners. He stated that according to the Payment of *Gratuity Act* only a workman is entitled to gratuity and that the petitioners were the primary shareholders and Directors of the company.

The learned Deputy Solicitor General further stated that the third respondent had not inquired into the status of the employment of the petitioners in the company nor have they looked into the contract of sale of the company to the present owners. He stated that the second respondent who directed the third respondent has correctly observed the

necessity of the above facts to be assessed before determining whether the petitioners are entitled to the payment of gratuity, as such the material evidence has not been furnished to consider at the inquiry therefore the administrative body has the powers to continue to hear the inquiry by calling for documentary evidence until such body is satisfactorily provided with evidence to make a reasonable and fair determination.

He further stated as provided by *sec. 8 (1)* of the said Act until the decision is perfected by the filing of the certificate in the Magistrate's Court any other communication shall be considered informal communication which can be varied from. The judgments in **Lamont vs Fry's Metals Ltd. (1985) 1 RLP 470, Hanks vs Ace High Production Ltd (1978) 1 CR 1155** were cited in support of this argument.

The respondents further stated that substantial evidence have not been submitted to show that the petitioners were employees of the company, that there was no contract of employment or board resolution of the company or salary slip to substantiate these employment.

The respondents stated that in the event an administrative body has acted contrary to the principles of natural justice such body is allowed to continue, rehear or reopen the inquiry. Judgments in **Ridge vs**

Baldwin 1964 AC 40, Regina vs Kensington and Chelsea Rent Tribunal ex parte MacFarlane 1974 1 WLR 1486 were cited in this favour.

The respondents further stated that the petitioners have not come to this court with clean hands, and that they have acted maliciously to prevent the first respondent from continuing with the inquiry. He also stated that the petitioners have come to the first respondent after a lapse of 3 years from their resignation and have not disclosed information regarding the conditions of sale of the company when they were Shareholders and Directors of the company.

The learned counsel for the fourth respondent submitted that the petitioners were members of the Board of directors of the fourth respondent company during the period stated in their claim and that the directors do not automatically become employees of the company by virtue of having been appointed directors.

The fourth respondent's counsel stated that the petitioners and the then Board of directors of the fourth respondent company negotiated and disclosed assets and liabilities and other contingencies and enabled the new team of management to carry out the acquisition of the fourth

respondent company, and that the fourth respondent trusted and was made to believe that what was disclosed were the only assets and liabilities of the company.

The fourth respondent further submitted that the petitioners having collected Rs. 100 million for their shares in the fourth respondent company and waiting for 3 years have filed an application in the Labour Tribunal to unjustly enrich themselves. He stated that since the Labour Tribunal was not revealed with the relevant facts the Labour Tribunal directed the fourth respondent to pay the sum due to the petitioners.

Citing the judgments in **Hanks vs High Production Ltd and Ridge vs Baldwin 1964 AC 40, Regina vs Kensington and Chelsea Rent Tribunal ex parte MacFarlan (1974) 1 NLR 1486** the fourth respondent stated that if a tribunal having considered all the arguments is of the opinion that it would be proper to reopen the matter and that the Tribunal has the power to reopen the inquiry.

The fourth respondent argued that the petitioners have not invited the attention of this court to any law which prohibits the first respondent from having the right to conduct the inquiry called for by the letter **P7** annexed to the petition.

On perusal of the judgments cited by the petitioners I find that they are not relevant to this application. The second respondent has decided to continue the inquiry to ascertain the exact position and verify whether the petitioners have acted as Directors or as employees of the fourth respondent company and to ascertain the details of their salary during the relevant time. In the inquiry proceedings produced to court it is stated that no documents were produced to support the petitioners EPF claims. The inquiry had been centered on EPF payments and the decision on gratuity had been made without any proper perusal of documents and facts. Where material evidence has not been furnished and thus not afforded the opportunity to take into consideration at the inquiry the administrative body has the power to continue to hear the inquiry until such body is satisfied.

Until the decision is perfected by the filing of the certificate in the Magistrate's Court any other communication is considered informal which can be varied from. In the instant case the parties were given an opportunity to present further arguments.

It will be in the best interest of both parties to continue and inquire into the position of the parties before filing of the final certificate in the Magistrate's Court to recover gratuity.

For the afore stated reason I decide to refuse the application of the petitioners with costs fixed at Rs. 100,000/=.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL