

**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 and Mandamus under  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

1. Shahid Mohamed Sangani  
No. 18/80, 5<sup>th</sup> Lane,  
Muhandirum E.D.D Dabare MW,  
Colombo 05.
2. Roshini Sangani  
No. 216, Lake Drive  
Colombo 08.

**Petitioners**

**CA [Writ] No: 506/2011**

**Vs.**

1. Commissioner General of Labour  
Department of Labour  
Labour Secretariat  
p.o Box 575, Colombo 05.
2. K.D Manoj priyantha  
Deputy Commissioner General  
Termination Department  
Department of Labour  
Labour Secretariat  
p.o Box 575, Colombo 05.

**And 193 other Respondents**

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

**COUNSEL** : SaliyaPieris for the Petitioner  
N. Kahawita S.C for the 1<sup>st</sup> & 2<sup>nd</sup>  
Respondents  
Tharika Pussellawa 3<sup>rd</sup> and the 4<sup>th</sup>  
Respondents

**ARGUED ON** : 28<sup>th</sup> June, 2016

**DECIDED ON** : 8<sup>th</sup> March, 2017

**L.U Jayasuriya J.**

The Petitioners to this Application have sought an order for Writ of Certiorari to quash two orders made by the 1<sup>st</sup> Respondent dated 05.01.2011 and 15.02.2010 produced and marked P11 and P12 respectively.

The 1<sup>st</sup> Respondent has ordered the Petitioners to pay compensation to the 6<sup>th</sup> to 193<sup>rd</sup> Respondents under section 6 of the Termination of Employment of Workmen (Special Provisions) Act No 45 of 1971 (hereinafter referred to as the said Act) as amended.

Admittedly the 3<sup>rd</sup> and the 4<sup>th</sup> Respondents were appointed as liquidators by the Commercial High Court in the case bearing No. CHC 6/2008/Co to wind-up the 5<sup>th</sup> Respondent Company, where the 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners had been Directors.

During the pendency of the winding-up process. The 6<sup>th</sup> to 193<sup>rd</sup> Respondent had complained to the 1<sup>st</sup> Respondent under and in terms of

the said Act, alleging that their services have been terminated contrary to the provisions of the said Act.

Accordingly, two cases bearing Nos TEU/A/57/2007 and TEU/C/31/2008 have been filed against the Petitioner by the 1<sup>st</sup> Respondent. The representative of the Petitioners has informed the 2<sup>nd</sup> Respondent who conducted the inquiry, that a provisional liquidator has been appointed by the Commercial High Court of Colombo.

On receipt of such representation, the 2<sup>nd</sup> Respondent had proceeded with the inquiry under and in terms of Section 12(2) of the said Act and made orders produced and marked as P11 and P12.

Section 12(2) of the said Act provides that,

“The Commissioner shall, for the purpose of any inquiry under this Act have all the powers of the District Court-

- a) To summon and compel the attendance of witnesses;
- b) To compel the production of witnesses; and
- c) To administer any oath or affirmation to the witnesses.

At this stage, it is pertinent to refer to section 279 of the Companies Act which provides that,

“When a winding-up order has been made or a provisional liquidator has been appointed, subject to the provision of subsection (2), no action or proceeding shall be proceeded with or commenced against the company except by the leave of the Court and subject to such terms as court may impose.”

It was held in **East West Research & Design (Pvt) Ltd Vs. Weerakoon Commissioner of Labour 1993 1 SLR 191** that the bar

imposed by section 264 can only be removed by the Court before which the winding-up is pending.

This court is of the view that the “inquiry” held by the 2<sup>nd</sup> Respondent will not fall within the ambit of “proceeding or action” contemplated by section 279(1) of the Companies Act as the institution headed by the 1<sup>st</sup> Respondent is not established by Law for the administration of justice.

Moreover, the 2<sup>nd</sup> Respondent has not filed proceedings in the Magistrate’s Court to implement the orders contained in P11 and P12 under section 6A(2) of the said Act.

This court holds that the orders contained in P11 and P12 are not illegal orders as they were made after holding an inquiry as evidenced by the documents produced and marked 1R1 to 1R7.

For the foregoing reasons, this Court refuses to issue the mandate sought by the Petitioners.

Accordingly, the Application of the Petitioners stands dismissed with cost fixed at Rs. 50,000/-.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J.** :

I Agree.

**JUDGE OF THE COURT OF APPEAL**