

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

CA Writ 208/2017

Lanka Brush Exports (Private) Limited,
No.36, Industrial Zone,
Modarawila, Panadura.

Petitioner

Vs.

1. Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
Kirula Road,
Colombo - 05.

2. L.M. Hewawithana,
Assistant Commissioner of Labour,
District Labour Office-Panadura
No.90, 07th Cross Street,
Pananadura.

3. M.S.K. Munagama,
Senior District Labour Officer,
District Labour Office-Panadura,
No.90, 07th Cross Street,
Pananadura.

And 02 others

Respondents

Court of Appeal case No. CA 208/2017 Writ**Before** : A.L. Shiran Gooneratne J.**Counsel** : M. Adamaly with Ms. S. Shaker instructed by Shanya Wickramarate for the Petitioner.Dhammika Jayanetti with Ms. Iromie Jayaratne for the 4th Respondent.**Decided on** : 29/09/2017**Order****A.L. Shiran Gooneratne J.**

Counsel for the Petitioner in support of this application moves for notices and stay orders as prayed for in terms of prayer (c) and (d) to the Petition. The Learned D.S.G. and Counsel appearing for the 4th Respondent have objected to the said relief been granted.

The Petitioner was informed by letter dated 19th August 2015, regarding an inquiry bearing reference No. පාන/කාස 3/Z/2/D/176/2015, by the 3rd Respondent in respect of a complaint made by the 4th Respondent. At the said inquiry the Petitioner and the 4th Respondent stated their respective positions in writing and with supporting documents.

The Petitioner states that the 4th Respondent in his dual capacity as an employer, functioned as the Head of the Board of Directors and in the role of an employee, as the Managing Director/ General Manager and further states that the 4th Respondent has agreed with the management to be paid a "Directors fee" for his functions qua Director. Therefore the Petitioner contends that the 4th Respondent was not entitled to EPF, ETF or other statutory payments related to salaries.

The 4th Respondent as an employee of the Petitioner had received a payment which the Petitioner submits was a "Directors fee" and not a "salary". As such the issue before the 3rd Respondent for determination was whether payments received by the 4th Respondent was a Directors fee or a salary. In this context I have perused documents marked P4 and the several attachments therein. The determination of the said inquiry is attached marked P8, where the 2nd Respondent held that the 4th Respondent is an Employee of the Petitioner and therefore the Petitioner is liable for payment of EPF to the 4th Respondent.

Respondents contend that when the Petitioner accepts the fact that the 4th Respondent is an Employee of the Petitioner the obvious conclusion that could be arrived at is that the 4th Respondent is an Employee of the Petitioner and therefore is entitled to all statutory related payments on salary.

In the aforesaid background the question to be answered is has the 2nd Respondent given adequate reasons in arriving at the said determination where he

has held that the 4th Respondent was an employee of the Petitioner and therefore is entitled for payment of EPF.

I refer to the Judgement of Ranjith Silva J in CA/1234/06, cited by the Counsel for the Petitioner. The Court in this case referred to the decision in *Bandara vs Premachandra* 1994-1 SLR 301 where Fernando J. held,

“The state must, in the public interest, expect high standards of efficiency and services from public officers in their dealings with the administration and the public. In the exercise of constitutional and statutory powers and jurisdictions, the judiciary must endeavour to ensure that this expectation is realized.”

At the said inquiry before the 3rd Respondent, the stand taken by the Petitioner was “whether the amounts paid to the 4th Respondent were paid in respect of his employment or whether it was paid as a director fee in respect of his role as a Director of the Petitioner.” The said determination in document marked P8 does not address the issue as to whether the 4th Respondent was paid a “Directors fee” or whether he was paid a salary by the Petitioner in his capacity as “General Manager/ Director,” but merely state that the 4th Respondent is an employee and therefore is entitled for payment of EPF.

In the circumstances I find that the Petitioner has been deprived of a determination on the disputed questions of fact and the reasons for it.

The Learned D.S.G. has also objected to this Petition on the grounds of undue delay in filing the Petition. However taking into consideration the documents marked P9, P11 and P12 (a) to P12 (b), I do not see a delay which can be attributed to the Petitioner.

Accordingly interim orders as prayed for in paragraphs (c) and (d) are granted.

I issue notice on the Respondents.

JUDGE OF THE COURT OF APPEAL