

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

In the matter of an application for orders
in the nature of writs of certiorari and
Mandamus in terms of Article 141 of the
Constitution.

1. K.L. Chandrala de Silva
2. Ms. K.K. Dayakanthi Ashoka

Both of, No. 127/10, Old Kandy Road,
Dalugama,
Kelaniya.

Petitioners

Court of Appeal case

No. CA 274/2017 Writ

Vs.

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

Respondents

Before : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : P. Radhakrishnam for the Petitioner.

N. Kahawita SC, for the Respondents.

Supported on : 12/10/2017

Decided on : 17/10/2017

Order

A.L. Shiran Gooneratne J.

Heard Counsel for the Petitioner for notice on the Respondent.

The Learned DSG appearing for the Respondent objected to notice being issued.

The Counsel for the Petitioner submits that it is imperative that the Respondent proceed in terms of Section 17 and/ or Section 38(1) of the EPF Act No. 15 of 1958 (as amended), before filing a certificate under Section 38(2) of the said Act for the recovery of default. When the Respondent is statutorily mandated to express an opinion, that it is impracticable or inexpedient to recover monies due under Section 17 or Section 38(1) as stated above, the Petitioner submits that the certificates filed in the cases pending against the Petitioner's in the Magistrate's Courts in terms of Section 38(2) are per se illegal.

The Counsel for the Petitioner has taken up the aforesaid objection in the Magistrate's Court of Mahara, case No. 85216 and the Learned Magistrate by order date 22 March 2017, has rejected the application of the Petitioner, and thereafter the Petitioner has informed Court that they would pay such default in installments.

The said order is unchallenged.

Apart from the said case, there are 10 other cases pending against the Petitioners before the Magistrate's Courts of Mahara and Mathugama. The Learned DSG submits that since the Petitioners are before the Magistrate's Court in the aforesaid pending cases, the present application seeking for substantive relief in the nature of a writ of certiorari is an abuse of judicial process. The Counsel for the Petitioner does not dispute the fact that there are pending cases against the Petitioner before the said Magistrate Courts.

As evident in Case No. 85216, the Petitioners have clearly submitted to the jurisdiction of the Magistrate's Court. As such this Court will not permit the Petitioners to make cross applications whereby the Petitioner's would be abusing the judicial process. It is within the discretion of this Court to refuse to issue writ if it is perceived that the Petitioner's have an adequate and appropriate remedy to address the relief prayed for. The Petitioner's have also not pleaded adequate reasons as to why the Petitioners should proceed by way of judicial review without pursuing an alternate remedy.

In the circumstance we are of the view that notice be refused.

Accordingly the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL