

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

N.W.P. Wijethunga,  
Naiyawala,  
Sidurupitiya,  
Niwithigala.

**PETITIONER**

**Court of Appeal case**

**No. CA 348/2015 Writ**

**Vs.**

1. M.D.C. Amarathunga,  
Commissioner General of Labour,  
Department of Labour,  
Colombo 05.  
and 8 others.

**RESPONDENTS**

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

&

A.L. Shiran Gooneratne J.

**Counsel** : Shantha Jayawardena for the Petitioner.

Vikum de Abrew, DSG for Respondents.

**Argued on** : 11/10/2017

**Judgement on** : 09/11/2017

**A.L. Shiran Gooneratne J.**

This is an application for the issue of writs in the nature of Certiorari, Mandamus and Prohibition.

By application dated 1<sup>st</sup> September 2015, the Petitioner has sought for a mandate in the nature of a writ of Certiorari to quash decisions reflected in P17, P21 and P22 made by the 4<sup>th</sup> Respondent (Assistant Commissioner of Labour Ratnapura) and also to quash the proceedings in the inquiry bearing No. TR/07/03/94/2012-A and No. TR/07/03/388/2012-D held before the 5<sup>th</sup> Respondent (District Labour Officer Ratnapura). The Petitioner has also sought and order in the nature of a writ of Mandamus to direct the 1<sup>st</sup> to 4<sup>th</sup> Respondents to hold a fresh inquiry regarding complaints made by the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents, and also for an order in the nature of a writ of Prohibition to stop further proceedings in Case No. 32060 Magistrate's Court of Ratnapura.

The Petitioner submits that he became aware that the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents had complained to the 4<sup>th</sup> Respondent, that as employees of the Petitioner they were deprived of payments due in terms of the Employees' Provident Fund Act (EPF). The Petitioner has admitted the employment of the 6<sup>th</sup>

Respondent for a period of 6 months from 1<sup>st</sup> January 1998. However has denied the employment of the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents at any time.

Due to the aforesaid complaints, the Petitioner was summoned by the 5<sup>th</sup> Respondent for an inquiry by notice bearing No. TR/07/03/388/2012, dated 1<sup>st</sup> January 2013, in respect of a complaint made by the 7<sup>th</sup> Respondent and by notice bearing No. TR/07/03/94/2012, dated 19<sup>th</sup> February 2013, on complaints by the 6<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents. The chronology of events pertaining to the said inquiries are set out in the Petition.

The Petitioner states that at the aforesaid inquiries he was deprived of submitting records to establish that the 7<sup>th</sup> to 9<sup>th</sup> Respondents were never employed by the Petitioner. However the 5<sup>th</sup> Respondent considered such evidence to be irrelevant. The Petitioner further submits that at the conclusion of the said inquiry the 5<sup>th</sup> Respondent informed the Petitioner orally that the statements given by the 6<sup>th</sup> to 9<sup>th</sup> Respondents were sufficient to establish that the said Respondents were employed by the Petitioner. The Petitioner has not received any written order to this effect.

Being aggrieved by the said order the Petitioner by letter dated 28<sup>th</sup> December 2013, to the 3<sup>rd</sup> Respondent (Deputy Commissioner of Labour) complained of irregularities of the said inquiry and had sought for a fresh inquiry to be held regarding the complaints preferred by the 6<sup>th</sup> to 9<sup>th</sup> Respondents. Accordingly the 3<sup>rd</sup> Respondent had directed the 4<sup>th</sup> Respondent (Assistant

Commissioner of Labour Ratnapura) to inquire into the matter and to submit a report to the 3<sup>rd</sup> Respondent. The Petitioner had not heard of any further action been taken by either of the Respondents regarding the said letter.

Thereafter, the Petitioner received notice dated 13<sup>th</sup> August 2014, from the 4<sup>th</sup> Respondent which is marked P17. After receiving the said notice the Petitioner by letter dated 3<sup>rd</sup> September 2014, complained to the 1<sup>st</sup> Respondent (Commissioner General of Labour) requesting for a fresh inquiry on the basis of irregularities of the previous inquiry to determine default EPF contributions if any, payable to the 6<sup>th</sup> to 9<sup>th</sup> Respondents. However the Petitioner received summons from the Magistrate's Court of Ratnapura in Case No. 32060 where the 4<sup>th</sup> Respondent had filed a certificate dated 30.01.2015 under Section 38(2) of the EPF Act.

On a direction given by this Court, by motion dated 24<sup>th</sup> January 2017, the entire record of the inquiry was tendered to Court by the 5<sup>th</sup> Respondent. The reasons given for the decision made by the 5<sup>th</sup> Respondent in proceedings dated 4<sup>th</sup> April 2014, states that,

“මීට පෙරත් මෙම සේවයාට එරෙහිව සේවකයින් පැමිණිලි කර ඇති අතර ඒ අනුව හිඟ ගණනය කිරීම් 8505/T ගොනුවේ වාර්තා ගත වී ඇත. ඒ අනුව මෙම සේවකයින් ද මෙම වත්තේ සේවය කරන්නට ඇති බව පිළිගත හැකිය.”

The Petitioner further states that the 5<sup>th</sup> Respondent failed to give the Petitioner and opportunity to submit documents which he relied upon to establish his case but proceeded to make order on the statements given by the 6<sup>th</sup> to 9<sup>th</sup> Respondents and also failed to give adequate reasons for his decision.

The Petitioner states that the documents which the Petitioner sought to present before the inquiry has been in the possession of the Petitioner. In terms of the EPF Act, the Commissioner of Labour is not only to determine claims, but he is also empowered to call for any record or documents for examination. As such it is incumbent upon the Inquiring Officer to have permitted the Petitioner to submit supporting documents which were in the possession of the Petitioner.

The Petitioner denies employing the 7<sup>th</sup> to 9<sup>th</sup> Respondents and states that the said Respondents were never employed by the Petitioner and further states that the 6<sup>th</sup> Respondent is not entitled to EPF payments. Proceedings dated 4<sup>th</sup> June 2014, makes it clear that the calculation of payment of arrears were done based on the statements given by the 6<sup>th</sup> to 9<sup>th</sup> Respondents.

It is observed that the 3<sup>rd</sup> Respondent by letters marked P15 and P23 has directed the 4<sup>th</sup> Respondent to re-visit the decision made by the 5<sup>th</sup> Respondent and to submit a report. Before the said determination by the 3<sup>rd</sup> Respondent the Petitioner by letter dated 28<sup>th</sup> December 2013, has also requested for a fresh inquiry stating irregularities in the conduct of the inquiry. However the 4<sup>th</sup>

Respondent has proceeded with the decision of the inquiry and has instituted action against the Petitioner in the Magistrate's Court.

The 5<sup>th</sup> Respondent's decision made on the 4<sup>th</sup> April 2014 is that there has been previous complaints against the Petitioner by past employees with regard to payment of EPF and therefore it is probable that the 6<sup>th</sup> to 9<sup>th</sup> Respondents were also employees of the Petitioner.

As held in *Sportsman Tea (Pvt) Ltd. vs. Commissioner General of Labour and others* (2006) 1 SLR 93, the 5<sup>th</sup> Respondent is not under a statutory obligation to give reasons for the said decision. However since the 5<sup>th</sup> Respondent has given his reasons for his decision, the Court can review such decision and grant relief to the Petitioner if needed. In his decision the 5<sup>th</sup> Respondent refers to a probability that the 6<sup>th</sup> to 9<sup>th</sup> Respondents were employees of the Petitioner. The said reference is based on facts remotely connected to the existence of previous non compliance of a statutory duty by the Petitioner. A determination based on probability regarding facts in issue is illogical and therefore, would not attract the protection of the law.

On an examination of the reasons given by the 5<sup>th</sup> Respondent, we are of the view that the said determination is based on irrelevant considerations thus depriving the Petitioner of his legitimate right to have a lawful inquiry.

In the circumstances of this application we are of the view that the Petitioner is entitled to the reliefs sought in his prayer to the Petition. As such we grant a writ of Certiorari quashing the decisions referred to in sub paragraph (d), (e), (f), (g) and (h) and a writ of Mandamus directing the Commissioner of Labour to hold a fresh inquiry referred to in sub paragraph (i) and grant a writ of Prohibition referred to in sub paragraph (j) of the prayer to the Petition.

I make no order as to costs.

Application allowed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

PRESIDENT OF THE COURT OF APPEAL