

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

*In the matter of an appeal against a
judgment of Provincial High Court
exercising its revisionary jurisdiction.*

C A (PHC)

126 / 2012

Provincial High Court of

Western Province (Colombo)

Case No. HCRA No. 93/2009

Magistrate's Court Mount Lavinia

Case No. 2932/S/6

Tri Star Apparel Exports (Pvt) Ltd,

No. 30,

Maligawa Road,

Ratmalana.

RESPONDENT - PETITIONER -
APPELLANT

-Vs-

1. Edirimannage Gunapala,
Acting Deputy Commissioner of Labour,
Department of Labour,
Colombo 05.

COMPLAINANT - RESPONDENT -
RESPONDENT

2. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENT - RESPONDENT

Before: P. Padman Surasena J (P/C A)

K K Wickremasinghe J

Counsel: W Dayaratne with R Jayawardena for the Respondent -
Petitioner - Appellant.

Manohara Jayasinghe SC for the Complainant - Respondent -
Respondent and Respondent - Respondent

Argued on: 2017-08-02

Decided on: 2018-06-22

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) had issued a notice under section 46 (3) of the Wages Boards Ordinance on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) calling upon it to pay Rs. 111,096,0/= as wages of its employees before 2006-07-19. The said notice has been produced in the Provincial High Court marked Ⓓ 4.

Thereafter, as the Appellant did not comply with the said direction, the 1st Respondent had instituted proceedings in the Magistrate's Court by filing a

certificate in terms of section 3 D of the Wages Boards Ordinance to recover the said sum of money from the Appellant.

The position taken up by the Appellant before the Magistrate's Court is that a part of the amount of money referred to in the certificate relevant to this case had already been paid to the employees. The Appellant has relied on copies of some cheques to attempt to prove that the said part of the relevant payment has been made by it. It is to be noted that the Appellant had merely produced this documents along with his written submission before the learned Magistrate. Therefore, at the very outset it must be observed that the Appellant has failed to legally adduce any evidence to satisfy Court that such payment has duly been made. This is because no responsible officer or for that matter no person has taken the responsibility of the impugned assertion that a part of money due has been paid. The 1st Respondent on the other hand had challenged the genuineness of the said document produced by the Appellant.

Learned Magistrate having considered the material so placed before him, being not satisfied with the Petitioner's position, by his order dated 2009-04-24, had ordered that the said amount of money be recovered as a fine and ordered the Appellant to pay the total sum of money referred to in the

certificate. He has also imposed a term of imprisonment of 12 months RI in the event of its failure to pay the said sum of money. This sentence has been imposed on the directors of Appellant company.

The Appellant thereafter had filed an application for revision in the Provincial High Court of Colombo seeking a revision of the order made by the learned Magistrate.

The position taken up by the Appellant before the Provincial High Court is that the relevant certificate has been signed by the Acting Deputy Commissioner of Labour and that he had no authority to sign the certificate and that such power only lies with the Commissioner of Labour under section 3 (D)(2) of the Wages Boards Ordinance.

The Provincial High Court after considering the material had dismissed the application holding inter alia;

- i. that the Appellant had failed to establish that a part of the sum of money set out in the certificate has been paid,
- ii. that the documents relied upon by the Appellant to prove the above position cannot be accepted,

- iii. that the Acting Deputy Commissioner of Labor is a competent person to issue the relevant certificate under section 3(D)(2) in terms of section 53 of the Act which has empowered the Commissioner of Labour to generally or specially authorize any Deputy Commissioner or any person appointed under section 52 to exercise, perform or discharge any power, duty or function of the Commissioner under this Ordinance,
- iv. that the said objection had not been raised by the Appellant before the learned Magistrate.

The Appellants in the course of the proceedings before this Court, restricted its argument only to one ground of appeal. The said ground is that the Appellant has already paid a substantial part of the money payable and that they are not liable to pay the full sum of money (i.e Rs. 1.1 Million) sought to be recovered through the certificate filed by the Commissioner of Labour.

As has been pointed out by the learned State Counsel the Respondent has written to the Appellant calling upon it to pay the said sum in default by the letter dated 2006-06-26. This document has been annexed as Ⓔ 1 to

the statement of objections filed in the Provincial High Court in the revision application filed before it. In response to that letter, the Appellant had replied by the letter dated July 2006 (annexed to the statement of objection filed in the High Court in the revision application as Ⓐ 2), claiming that a substantial sum of money has already been paid. Then the Commissioner of Labour replying to the said letter by the Appellant, called upon the Appellant to substantiate the position that it had paid a part of the dues. However, the Appellant had chosen not to reply to the said letter. It was thereafter, on 2006-07-19, that the 1st Respondent had issued a notice under section 46 (3) of the Act.

It is the position of the Appellant that the payment it claims to have been made had been made by cheque numbers 536253, 156258, 536254, 536261, 536259, 536256, 536260, 536257. (The Appellant has set out the details of these cheques in his written submissions filed before this Court also.)

However, as has been pointed out by the learned State Counsel this Court observes that the above cheques are dated in the following manner.

	CHEQUE NO.	DATE OF THE CHEQUE
1.	536253	2008-05-28
2.	156258	2008-06-26
3.	536254	2008-05-28
4.	536261	2008-06-26
5.	536259	2008-06-26
6.	536256	2008-05-28
7.	536260	2008-06-26
8.	536257	2008-05-28

When considering the above facts, it is not possible for this Court to see any basis to disagree with the conclusion arrived at by the learned Provincial High Court Judge in his order dated 2012-05-24.

For the foregoing reasons, this Court decides to affirm the said order and dismiss this appeal.

This Court notes that the 1st Respondent had written to the Appellant to pay this amount of money which is wages due to its employees, in as far back as in 2006. By way of a frivolous revision application and an appeal the Appellant has resorted to delaying tactics. In these circumstances, this Court directs the Appellant to pay a state cost of Rs. 50,000 (payable by the Appellant to the state).

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL