

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

Sumanasekara Construction (Pvt) Ltd.
No.8 1/3, Sunethradewi Road,
Kohuwala, Nugegoda.

Respondent-Petitioner-Appellant

Case No. CA (PHC) 195/2013

H. C. Matara Case No: HC/REV/161/13

M.C. Matara Case No: 65540

Vs.

Deputy Commissioner of Labor
Legal Action Department,
Labor Department,
Colombo 05.

Complainant-Respondent-Respondent

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

Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Respondent-Petitioner-Appellant absent and unrepresented.

Indula Ratnayake State Counsel for Applicant-Respondent-Respondent and Respondent-Respondent

Written Submissions tendered on:

Applicant-Respondent-Respondent and Respondent-Respondent on 21.08.2018

Argued on: 29.06.2018

Decided on: 21.09.2018

Janak De Silva J.

This is an appeal against the order of the learned High Court Judge of the Southern Province holden in Matara dated 27th November 2013.

The Applicant-Respondent-Respondent (Respondent) filed a certificate dated 1st March 2012 under Section 3D (2) of the Wages Boards Ordinance No. 27 of 1941 as amended (Ordinance) in the Magistrates Court of Matara in the above styled action stating that the Respondent-Petitioner-Appellant (Appellant) had defaulted in the payment of a sum of Rs. 49,000/= to one Somasiri Samarajeewa, an employee of the Appellant, for the period 01.01.2009 to 23.06.2009 which the Appellant was liable to pay under Section 3D (1) of the Ordinance.

The Appellant appeared before the Magistrates Court and objected to the said application. After inquiry, the learned Magistrate delivered order on 31.10.2013 and directed the recovery of the said sum from the Appellant as a fine. The Appellant thereafter moved by way of revision to the Provincial High Court of Matara. The learned High Court Judge refused to issue notice in the said revision application. Hence this appeal by the Appellant.

Scope of Proceedings under Section 3D (2) of the Ordinance

The Ordinance sought to regulate the wages and other emoluments of persons employed in trades. Section 3D of the Ordinance makes provision for the recovery of arrears of wages in certain cases. Section 3D (1) of the Ordinance allows the Commissioner of Labour (Commissioner) to assess the wages or the short payment of wages of a worker on the basis of all the evidence both oral and documentary available to him. Section 3D (2) of the Ordinance provides for the recovery of the said sum as a fine by issuing a certificate to the Magistrate having jurisdiction.

Section 3D (3) of the Ordinance provides that the correctness of any statement in a certificate issued by the Commissioner for the purpose of that section shall not be called in question or examined by the court in any proceedings.

In ascertaining the scope of the proceedings before the Magistrate commenced upon a certificate filed in terms of section 3D (2) of the Ordinance, it is permissible to consider Acts of Parliament which are *in pari materia*. In *Crosley v. Arkwright* [(1788) 2 T.R. 603, 608, (1788) 100 E.R. 325, 328] Buller J. held that all Acts relating to one subject must be construed *in pari materia*.

The wording in section 3D (3) of the Ordinance is identical to the wording in section 38(3) of the Employees' Provident Fund Act No. 15 of 1958 as amended (EPF Act). I am of the opinion that the Ordinance and the EPF Act are Acts *in pari materia* as they deal with labour relations with a view to safeguarding the interest of the worker.

The provisions in section 38(3) of the EPF Act was interpreted by the Court of Appeal in *Attorney General v. City Carriers Ltd.* [(1991) 1 Sri. L. R. 227] to mean that the only permissible defences before the Magistrate are:

- (a) Employer has already paid the amount due
- (b) The Employer is not the defaulter
- (c) The certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings

In the appeal the Supreme Court held in *City Carriers Ltd. v. The Attorney General* [(1992) 2 Sri. L. R. 257] that the certificate in question did not contain the particulars of the sum claimed and as such there was no certificate filed before the Magistrates Court in terms of section 38(2) of the EPF Act and accordingly this is a matter that can be raised by the Employer.

In *Mohomed Ameer and another v. Assistant Commissioner of Labour* [(1998) 1 Sri. L. R. 156] the Supreme Court after a detailed analysis of the relevant provisions held that in relation to proceedings initiated under section 38(2) of the EPF Act, two questions arise.

One is the requirement of **form** which addresses the question whether the certificate filed sufficiently sets out the particulars required by section 38(2) of the EPF Act. It must name or otherwise adequately identify the employees in respect of whom the default is alleged and that (at least) where the default is alleged in respect of a period during which there have been changes in remuneration and/or rates of contributions, the remuneration in relation to which the contributions and default has been computed must also be disclosed. Where these particulars are not contained in the certificate filed, it results in the formal invalidity of the certificate which is a matter that can be raised before the Magistrate.

The second question is whether the statements in the certificate filed can be challenged which is referred to as a question relating to **proof**. Section 38(3) of the EPF Act prevents any such challenge to the correctness of the statements in the certificate. Accordingly, a person summoned before the Magistrate is prevented from assailing the certificate on such grounds.

Accordingly, where proceedings are instituted in terms of section 38(2) of the EPF Act, the available defences for the employee summoned are as follows:

- (a) The certificate is not a certificate within the meaning of section 38(2) of the EPF Act as no proper particulars have been given in the certificate,
- (b) Employer has already paid the amount due.
- (c) The Employer is not the defaulter.
- (d) The certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings.

Where there are statutes made *in pari materia*, whatever has been determined in the construction of one of them is a sound rule of construction for the other [Craies on Statute Law, 7th Ed., page 139]. When enacting a new law, the legislature is presumed to have had in contemplation the existing statutes on the same subject, and to have framed its enactment with reference thereto. This is the real basis for the rule *in pari materia*; and it is conducive to judicial discipline to interpret identical provisions in two Acts which are *in pari materia*, in a similar manner [Bindra, *Interpretation of Statutes*, 10th Ed., 845].

Therefore, I am of the view that, where proceedings are instituted in terms of section 3D (2) of the Ordinance, the available defenses for the Employer summoned are as follows:

- (a) The certificate is not a certificate within the meaning of section 3D (2) of the Ordinance as the particulars of the sum claimed and the identification of the employee have not been given therein.
- (b) Employer has already paid the amount due.
- (c) The Employer is not the defaulter.
- (d) The certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings.

The Appellant urged the following grounds before the learned Magistrate:

- (i) The certificate filed in the instant case has been issued by a Deputy Commissioner of Labour (Acting) whereas in terms of section 3D (2) of the Ordinance, only the Commissioner is authorized to issue a certificate.
- (ii) The sanction of the Commissioner is required for a prosecution under the Ordinance whereas the certificate filed in the instant case does not disclose such sanction was given.
- (iii) An application had not been made under and in terms of section 136 of the Criminal Procedure Code.
- (iv) An employee by the name Somasiri Samarajeewa is not employed by the Appellant.

Certificate issued by a Deputy Commissioner

Section 53 of the Ordinance allows the Commissioner to generally or specially authorize any Deputy Commissioner or any person appointed under section 52 of the Ordinance to exercise, perform or discharge any power, duty or function of the Commissioner under the Ordinance. Section 64 of the Ordinance defines "Commissioner" to include any person authorized by the Commissioner under section 53 of the Ordinance in respect of any particular power, duty or function of the Commissioner under the Ordinance. Section 114 of the Evidence Ordinance illustration (d) allows the court to presume that judicial and official acts have been regularly

performed and it was open for the Magistrates Court to presume that the Deputy Commissioner of Labour (Acting) who filed the certificate was duly authorized to do so without calling for evidence from him. In any event, a letter of authority dated 26th July 2010 was issued to Mr. D.M. Karunarithna, Deputy Commissioner of Labour (Acting) who filed the certificate which was produced before the Magistrate and is found at page 97 of the Appeal Brief.

In these circumstances, this objection by the Appellant is devoid of any merit.

Sanction of the Commissioner

This is not an objection that can be raised before the Magistrate for the reasons set out above. However, the letter of authority dated 26th July 2010 issued to Mr. D.M. Karunarithna, Deputy Commissioner of Labour (Acting) who filed the certificate which was produced before the Magistrate and is found at page 97 of the Appeal Brief negates this objection.

Section 136 of the Criminal Procedure Code

The instant proceedings were instituted under section 3D (2) of the Ordinance. Unlike under section 46(1) of the Ordinance, section 3D (2) of the Ordinance does not refer to section 136 of the Criminal Procedure Code. Hence this objection is misconceived in law,

In any event, section 30 of the Judicature Act vests the Magistrates Court with jurisdiction in relation to a certificate filed under section 3D (2) of the Ordinance in view of the words "any other enactment" therein.

Hence, this objection of the Appellant is also misconceived in law.

Somasiri Samarajeewa is not employed by the Appellant

The certificate filed under section 3D (2) of the Ordinance stated that one Somasiri Samarajeewa was employed by the Appellant which the Appellant sought to impugn.

The documents marked "P.2", "P.3" and "P.4" in the Appeal Brief at pages 95 to 97 contains evidence that the said Somasiri Samarajeewa was an employee of the Appellant. Therefore, there is no merit in this objection raised by the Appellant.

For the foregoing reasons, I see no reason to interfere with the order of the learned High Court Judge of the Southern Province holden in Matara dated 27th November 2013.

The appeal is dismissed with costs fixed at Rs. 25,000/=.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal