

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

In the matter of an application for a mandate in the nature of a Writ of Certiorari under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ariyaseela Wickramanayake
Maritime Center
No. 234, Galle Road,
Colombo 03.

Petitioner.

Case No. CA (Writ) 416/2012
Arbitration case No. A 3390.

Vs.

01. Hon M.D.K. Kulatunga
Attorney at Law.
No. 34, Amarasekera Mawatha,
Colombo 05.

02. Hon Gamini Lokuge,
Minister of Labour & Labour Relations.

03. V.B.P.K. Weerasinghe
The Commissioner General of Labour.

04. The Assistant Commissioner of
Labour (Colombo North)

05. Registrar
Industrial Court.

2 to 5 are at
Labour Secretariat
Colombo 05.

06. J.A. Sugith Pushpakumara
Aluthwatta, Walgama
Matara
Now at "Sharaka" Thudella,
Kaburugamuwa, Matara.

07. Hon Attorney General
Attorney General Department.
Colombo 12.

Respondents.

Before : E.A.G.R. Amarasekara, J
Counsel : K.G. Jinasena with D.K.V. Jayanath for the Petitioner
N. Kahawita for the 2nd, 3rd, 4th and 7th Respondent.
6th Respondent not preset and unrepresented.
Decided on : 07.12.2018.

E.A.G.R. Amarasekara, J.

The Petitioner has prayed inter alia that this court be pleased;

- b. To grant and issue a mandate in the nature of writ of Certiorari quashing the decision made by the 2nd Respondent to appoint an Arbitrator to settle a dispute which had arisen between irrelevant parties;
- c. To grant and issue a mandate in the nature of writ of Certiorari quashing the said notice, P2 published in the Government Gazette No. 1709/48 dated 10.06.2011 by the 2nd Respondent.

- d. To grant and issue a mandate in the nature of Writ of Certiorari quashing the said award made in P4 and published in the Government Gazette No. 2739/14 dated 04.01.2012.
- e. To grant and issue an interim order restraining the 3rd and 4th Respondents and any subordinate officer of those Respondent from taking any steps whatsoever towards the implementing of the said award marked as P4 published in the Government Gazette dated 04.01.2012 and recovering the said sum of Rupees Four Hundred and Thirty Two Thousand (Rs.432,000) until final determination of this application.

For the reasons given below I allow the application and grant the reliefs as prayed for in prayer b, c, and d of the petition dated 24.12.2012.

The Petitioner in his Petition at paragraph 9J has stated that the 6th Respondent who is the complainant of the purported dispute first filed an application before the Labour Tribunal praying for relief but the said application was dismissed for reasons of not filing the said application within time. The 2nd to 5th Respondents in replying to paragraph 9 of aforesaid Petition in their statement objections have not denied the aforesaid statement in the paragraph 9J of the Petition but have stated that they are unaware of it. The 6th Respondent who should know this has not filed any objection ^{reputing} the aforesaid statement of the petitioner. However, the Petitioner has annexed the proceedings before the arbitrator to his petition marked as P5. The said P5 contains the proceedings of the inquiry held by the Commissioner of Labour (Industrial Relations) dated 29.06.2010. As per the said

proceedings, the 6th Respondent had admitted before the Commissioner of Labor that he filed an application before the Labour Tribunal but it was dismissed for reason of not filing within the time limit. Therefore, it is acceptable that the 6th Respondent filed an application before the Labour Tribunal, which was later dismissed for the reason mentioned above.

Section 31 B (2)(4) of the Industrial Dispute Act makes provision to dismiss the application before the Labour Tribunal when the same matter is pending before an arbitrator appointed under section 4 of the said Act. This indicates that the Petitioner cannot seek both remedies, namely the relief from Labour Tribunal under Section 31 B (1) and through an arbitrator appointed under section 4 of the same Act. This is further fortified by the most relevant section of the said act to the issue at hand which is section 31 B (5). It is quoted below.

“ (5) where an application under subsection (1) is entertained by a Labour Tribunal and proceedings there on are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1).

Furthermore, once a Labour Tribunal takes up an application and makes a decision allowing or dismissing it, subject to an appeal, there cannot be any live dispute to refer to arbitration under section 4(1) of the Industrial Dispute Act.

For the forgoing reasons, it is my considered view that the reference of the purported dispute to settle by arbitration by the relevant minister ^{itself} is illegal from the beginning. It is my view that such an illegality cannot be cured by acquiescence since such a remedy is prohibited by section 31 B (5). On the other hand, as mentioned before, there was no live dispute to be referred for arbitration with the dismissal of the application by the Labour Tribunal.

Hence, I allow this application and grant the reliefs as prayed for in prayer b, c, and d of the petition.

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E.A.G.R. Amarasekara, J
Judge of the Court of Appeal