

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

Pradeshiya Sabha of Wattala,  
Hendala,  
Wattala.  
Respondent-Respondent-  
Petitioner

**CASE NO: CA/PHC/APN/124/2016**

**HC NEGOMBO CASE NO: HCRA/123/2015**

**MC WATTALA CASE NO: 95027/14**

Vs.

Assistant Commissioner of  
Labour,  
District Labour Office,  
Ja-Ela.  
Complainant-Petitioner-  
Respondent

Before: A.L. Shiran Gooneratne, J.

Mahinda Samayawardhena, J.

Counsel: Padmakumara Randeny for the Petitioner.

Sobhitha Rajakaruna, Senior D.S.G., for the  
Respondent.

Argued on: 28.05.2019, 02.07.2019

Decided on: 25.07.2019

Mahinda Samayawardhena, J.

The Commissioner of Labour as the complainant has instituted this action in the Magistrate's Court of Wattala against the present petitioner, Pradeshiya Sabha of Wattala, by filing the Certificate marked P1 under section 38(2) of the Employees' Provident Fund Act to recover unpaid Employment Provident Fund contributions for a former employee of the Pradeshiya Sabha. The learned Magistrate has dismissed the action by order dated 29.08.2014. Then the Commissioner of Labour has made an application before the High Court to have the said order revised. As the Pradeshiya Sabha was absent and unrepresented on two consecutive dates of argument, i.e. 09.02.2016 and 11.05.2016, the High Court has heard the counsel for the Commissioner of Labour and delivered the Judgment *ex parte* on 14.06.2016 setting aside the Magistrate's Court order.

The Pradeshiya Sabha has filed this revision application before this Court on 30.09.2016 seeking to set aside the above *ex parte* Judgment as the main relief.

It is the complaint of the Pradeshiya Sabha that the Judgment should not have been delivered *ex parte* because the counsel could not be present in Court on the aforementioned first date of argument due to ill-health, and on the second date, as no notice was received.

If the counsel was ill on the date of the argument, he could have informed it to the Court and moved for a postponement. This has not been done. However the Court has, according to the Journal Entry dated 09.02.2016, issued notice on the

Pradeshiya Sabha and re-fixed the matter for argument for 11.05.2016. I must state that once the case is fixed for the argument in the presence of both parties, there is no legal requirement to reissue notice, if one party is absent. Hence the submission that the Pradeshiya Sabha was not represented on the aforesaid second date of argument because no notice was served on the Pradeshiya Sabha is outrageous. However, according to the Journal Entry dated 11.05.2016, notice had in fact been issued on the Pradeshiya Sabha.

Be that as it may, the Pradeshiya Sabha, in paragraph 22 of the petition states that, its Attorney filed an application before the High Court by way of petition and affidavit on 14.07.2016 seeking to relist the matter for argument but the High Court Judge refused that application by order dated 20.07.2016. The alleged “true copies” of the said petition and affidavit have been marked as P9A and P9B, and a certified copy of the said order as P10.

However no Journal Entry has been produced confirming that such a relisting application was made to the High Court. I cannot accept P9A and P9B as “true copies” of the petition and affidavit tendered to the High Court. P9A petition is undated and tampered with by making various personal notes on it. P9B affidavit is also undated and unsigned. They can no way be regarded as true copies of the originals. At the argument on 02.07.2019 when the question was posed why certified copies of the alleged petition and affidavit were not tendered to this Court, the learned counsel for the petitioner stated that no such relisting application filed by way of petition and affidavit could be found in the High Court case. Then this Court has to

conclude that no proper relisting application was filed by the petitioner before the High Court for the High Court to consider that application.

Even assuming without conceding that P10 is the order refusing the properly made relisting application, not a single word has been mentioned by the petitioner in this revision application why the petitioner could not exercise his right of appeal against that order within time.

One cannot invoke the extraordinary jurisdiction of this Court by way of revision as of right. Revision is a discretionary remedy. When a right of appeal is available against a Judgment or order, a party who did not exercise that right is ought to give an explanation in his application why he did not exercise that right in the event he decides to come before the Appellate Court by way of revision instead of appeal.

Let me now advert to the merits of the petitioner's application. The learned Magistrate has dismissed the Commissioner General's Case/Application/Certificate as the incumbent Chairman of the Provincial Council is not liable to pay the whole amount stated in the Certificate as he was not the Chairman for the entire period during which Employment Provident Fund contributions are in arrears. The learned Magistrate has allowed to file a fresh Certificate giving a breakdown of Employment Provident Fund contributions under different Chairmen. It is this order of the learned Magistrate the High Court has set aside.

At the argument when the question was posed to the learned counsel for the petitioner whether, according to him, the learned

Magistrate's conclusion was correct, the learned counsel was prevaricating. Thereafter the learned counsel stated that, if the case was filed against the Pradeshiya Sabha of Wattala, in terms of section 2(2) of the Pradeshiya Sabha Act, as the Pradeshiya Sabha of Wattala is a juristic person, the entire Employment Provident Fund contributions could have been recovered from the Pradeshiya Sabha of Wattala Fund and the Certificate to that extent would have been in order. However it was the submission of the learned counsel that the Commissioner of Labour filed the Certificate not against the Pradeshiya Sabha of Wattala but against the Chairman of the Pradeshiya Sabha of Wattala, which is bad in law. However when I peruse the Certificate in the course of writing this Judgement it is clear to me that the Commissioner of Labour filed the Certificate in the Magistrate's Court not against the Chairman of the Pradeshiya Sabha of Wattala but against the Pradeshiya Sabha of Wattala. Vide the copy of the Certificate filed with the petition marked P1, which is found at page 51 of the Brief.

Learned counsel for the Pradeshiya Sabha admits that, in terms of section 132(p) of the Pradeshiya Sabha Act, such Employment Provident Fund contributions can be paid by Pradeshiya Sabha Fund established by each Pradeshiya Sabha without making it a personal responsibility of the Chairmen. Section 132(p) reads as follows:

*There shall be paid out of the Pradeshiya Sabha Fund established by each Pradeshiya Sabha all expenses incurred by the Pradeshiya Sabha or by the Chairman or the Secretary or any other officer of the Pradeshiya Sabha on behalf of the Pradeshiya Sabha in the exercise of its*

*powers and the discharge of its functions and duties under this Act or other written law or any by-law, rule or regulation, made the under.*

This application for revision is clearly devoid of merit. I dismiss the application with costs.

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal