

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

Sussex Educational Services
Limited.,
No. 153 1/1,
Dharmapala Mawatha,
Colombo 7.
Petitioner

CA CASE NO: CA/WRIT/75/2015

Vs.

The Commissioner General of
Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.
And another
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Hijaaz Hizbulla for the Petitioner.
Kanishka De Silva Balapatabandi, S.S.C., for
the Respondents.
Decided on: 18.11.2019

Mahinda Samayawardhena, J.

The petitioner filed this application against the Commissioner of Labour (respondent) seeking to quash by way of a writ of certiorari the certificate filed in the Magistrate's Court under section 38(2) of the Employees' Provident Fund, No.15 of 1958, as amended, marked X2, predominantly on the basis that, "*although the certificate referred to 1890 employees, the particulars of the said employees were not set out in the said certificate so as to facilitate the petitioner company to show cause*".

The respondent filed objections to this application stating *inter alia* that particulars running into large number of pages were filed in the Magistrate's Court separately, together with the certificate, and produced them marked 3R5C and 3R5D.

The petitioner admits receipt of the Final Notice marked 3R4 sent by the respondent to the petitioner before filing the certificate marked X1 in Court. The petitioner has not responded to it. In the circumstances, the respondent had no option, but to file the certificate X1 in the Magistrate's Court.

When X1 was filed, the Magistrate's Court issued notice on the petitioner to show cause. As seen from the proceedings of the Magistrate's Court, the petitioner has responded to it, and the parties had been exploring the possibility of a settlement of the matter.

The documents marked 3R6 and 3R6(a) filed by the respondent with the objections contain this "settlement" where the petitioner has shown some payments made as EPF contributions, which are not reflected in the certificate X1.

It is thereafter the amended certificate X2 has been filed by deducting the said payments.

The respondent cannot be found fault with filing the amended certificate with leave of Court and without objection from the petitioner, because the petitioner did not produce those payment receipts to the respondent when the Final Notice 3R4 was sent prior to the filing of the certificate X1.

The petitioner in the counter affidavit states that the surcharge in X2 cannot remain the same, when amount of contribution is changed. These are factual matters, of which there is no agreement between the parties. Writ does not lie when facts are in dispute.

In the two cases cited by the counsel for the petitioner, i.e., *City Carriers v. Attorney General [1992] 2 Sri LR 257* and *Mohomed Ameer v. Yapa, Assistant Commissioner of Labour [1998] 1 Sri LR 156*, no particulars had been provided in the certificates, and therefore distinguishable.

I dismiss the application of the petitioner. No costs.

Judge of the Court of Appeal