

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

In the matter of an application for Revision under Article 138 of the Constitution read with Section 11 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 against an order dated 23.09.2019 in the Provincial High Court of North Western Province (Holden at Chilaw) in Revision Application No. HCR 50/19 and the order dated 18.06.2019 in M.C. Chilaw Case No.2520/18.

C.A./Rev/PHC/APN/No.117/2019

P.H.C. Chilaw (Rev.) Application NO.50/19

M.C. Chilaw Case No.2520/18

Acting Deputy Commissioner of Labour,
Labour Secretariat, Colombo 5.

Petitioner

Vs.

Bhuwalka Steet Industries (Sri Lanka) Ltd.,
No.5-10, 5th Floor, East Tower,
World Trade Centre, Colombo 1.

Respondent

Bhuwalka Steet Industries (Sri Lanka) Ltd.,
No.5-10, 5th Floor, East Tower,
World Trade Centre, Colombo 1.

Respondent-Petitioner

Vs.

Acting Deputy Commissioner of Labour,
Labour Secretariat, Colombo 5.

Petitioner-Respondent

Bhuwalka Steet Industries (Sri Lanka) Ltd.,
No.5-10, 5th Floor, East Tower,
World Trade Centre, Colombo 1.

Respondent-Petitioner-Petitioner

Vs.

Acting Deputy Commissioner of Labour,
Labour Secretariat, Colombo 5.

Petitioner-Respondent-Respondent

BEFORE: **PRASANTHA DE SILVA, J.**
K.K.A.V. SWARNADHIPATHI, J.

COUNSEL: Dr Sunil Cooray with Jude Dinesh
For the Petitioner

Manohara Jayasinghe, DSG
For the Respondent

Date of argument: 07.06.2022

Judgment delivered on: 31.10.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The revision application emanates from a certificate filed by the Acting Deputy Commissioner of Labour at the Magistrate Court of Chillaw against the Respondent-Petitioner-Petitioner.

Once the certificate was filed in the Magistrate's Court of Chillaw in May 2018, the order was made to issue the summons. On summons, Respondent Buwalk Steel Industries (Sri Lanka) appeared through a representative in Court and was given time to file objections. On receiving objections, a date was given to file counter objections, and on 18.06.2019, the order was pronounced.

Aggrieved by the order, the Respondent filed a Petition to the High Court of Chillaw. At the High Court, the learned High Court Judge rejected the application for want of special grounds. Aggrieved by the said decision, the Respondent-Petitioner again filed papers at the Court of Appeal. From now on, for easy reference, the Respondent-Petitioner-Petitioner will be called the "**Petitioner**" and the Petitioner-Respondent-Respondent as the "**Respondent**".

The Petitioner had argued that Chillaw Magistrate's Court had no jurisdiction to entertain the case as the law requires the case to be filed in the jurisdiction where the Petitioner resides.

The Petitioner, in his counter objections filed on 28.07.2020, had admitted,

"..... and further denies that the Petitioner's registered place of business is situated within the local limits of the jurisdiction of the said Magistrate's Court. The registered address of the Petitioner is at Colombo"

Section 3D (2) of the Wages Board Ordinance.

(2) Where an employer makes default in the payment of any sum which he is liable to pay under subsection (1), and the commissioner is of the opinion that it is impracticable or inexpedient to recover that sum under any other provisions of this ordinance, then, he may issue a certificate containing particulars of the sum so due and the name and place of the defaulting employer to the Magistrate having jurisdiction in the division in which such place is situated. The Magistrate shall thereupon summon such employer before him to show cause why further proceedings for the recovery of the sum due should not be taken against him, and in default of sufficient cause being shown, such sum shall be deemed to be a fine imposed on such employer by such Magistrate and shall be recovered accordingly. Every sum so recovered shall be paid to the commissioner."

Bhauwalka Steel Industries (Sri Lanka) Ltd. has its business registered at No.5-10, 5th Floor, East Tower, World Trade Center Echelon Square, Colombo.

What the section says is:

"..... Magistrate having jurisdiction in the division in which such place is situated".

Such a place is where the default occurred; that is where the people were employed. Local taxes should be paid to the administrative division of any workplace when situated in any administrative division. For example, licence fees and revenue tax are collected in the local administrative division, in this case, not in Colombo, regarding the place of work. That proves that even though the company registration is in Colombo, the business is also subject to laws where operations occur. On the same ground where workers are employed and are in service is where salaries are paid. The ordinance refers to the place where the people are working. That place is where the cause of action arises.

The learned High Court Judge and the Magistrate had correctly identified the jurisdiction issue.

The next question was whether an acting Deputy Commissioner could sign the certificate. When someone is permitted to act, he has all the powers of the principal in decision-making. If the person cannot take decisions in an emergency, there is no point in an acting appointment. Unless his letter

of appointment specifically stipulates his functions are limited in the eyes of the law, any function done in carrying out duties in an acting capacity is valid as that of a permanent appointee.

The Petitioner had argued that the certificate filed before the Court was not according to the rules of the Wagers Board Ordinance. According to the ordinance, the sum due and to whom that is due should be clearly shown. One of the reasons to do so is to facilitate the owner or employer to show cause, if any.

In this case, the certificate filed in Court indicates the schedule of workers employed in the annexure. The description carries the number of workers to whom payments were not made and the period to which the payments were due. The period was shown as 01.05.2014 to 30.04.2017, and the defaulted amount was Rs.26,430,310.00.

The page ends with that, and the next page is the schedule. In this schedule, five sections give out the details in numerical order from 1-23, the employee's name, the type of employee, the period for which money was due, and the sum due.

This schedule is part and parcel of the certificate as the certificate used the words to refer to the annexure and the schedule. Anyone can clearly understand the employee, the type of work he did, the amount due to him and the period of default. The acting deputy labour commissioner had duly signed that schedule too. It carries the same date as the certificate. When a document is part and parcel of the certificate, that should be considered the certificate.

The ordinance had not discussed whether an employee is a skilled labourer or not. It had only mentioned workman. Therefore, the question of whether skilled or unskilled is not an issue in filing the certificate. The certificate carries the words "employed in engineering trade".

However, in the schedule, 23 workers are described as unskilled under the column type of labourer. Therefore, for the purpose of this certificate, the employees are employed in the engineering trade as unskilled labourers who fall within the meaning of worker for whom the ordinance applies.

For reasons set out above, we affirm the order pronounced by the learned High Court Judge of Chillaw on 23.09.2019 in case No:.H.C.R.50/19.

Appeal dismissed subject to a tax of Rs.10,000/=.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal