

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In The matter of an appeal under Article 154 P3(b) read with Section 320 of the Criminal Procedure Code and Section 4 of Act No.19 of 1990.

Deputy Commissioner of Labour,
Department of Labour, Labour
Secretariat, Colombo 05.

Complainant

CA PHC No.204/16

H.C. (Rev) 05/2015

Case No.70778/14

Vs.

Nesto Confectionary Lanka (Pvt) Ltd.,
Nattarampotha, Kundasale.

Owner-Respondent

AND NOW

Nesto Confectionary Lanka (Pvt) Ltd.,
Nattarampotha, Kundasale.

Owner-Petitioner

Vs.

Deputy Commissioner of Labour
Department of Labour,
Labour Secretariat, Colombo 05.

Complainant-Respondent

AND NOW BETWEEN

Nesto Confectionary Lanka (Pvt) Ltd.,
Nattarampotha, Kundasale.

Owner-Petitioner-Appellant

Vs.

Deputy Commissioner of Labour
Department of Labour,
Labour Secretariat, Colombo 05.

Complainant-Respondent-Respondent

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

Counsel: ChathuraGalhena
For the Owner-Petitioner-Appellant

R. Goonarathna, S.C.
For the Appellant-Respondent-Respondent

Argument: By way of written submissions

Delivered on: 19.10.2022.

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

ORDER

The Appellant-Respondent-Respondent [hereinafter referred to as the Respondent) instituted action in the Magistrate Court of Kandy against the owner Petitioner-Appellant in terms of Section 8(1) of the Payment of Gratuity Act No.12 of 1983.

Notice was issued to the Appellant, and on appearance, he was given an opportunity to show cause as to why the certificate filed by the Respondent should not be collected as a fine. He took up the position that the persons named were never in his employment. However, he admitted that before issuing the certificate, an inquiry was held.

Aggrieved by the decision of that inquiry, he had appealed to the Commissioner-General of Labour. According to the Appellant, he is not aware of the decision of that appeal up-to-date.

According to the Respondent, an inquiry was held regarding the appeal, and all parties were heard. An opportunity was given to show by leading evidence that the persons named were not employees of the Appellant.

The Appellant sought to lead evidence when the certificate was filed in the Magistrate Court of Kandy. The Magistrate refused the application. Aggrieved by that decision, he lodged the revision papers.

The learned High Court Judge had decided that the Petitioner-Appellant had not shown exceptional circumstances to consider his application.

*Dharmarathna and Others Vs. Perm Paradise Cabanas Limited and Others*¹ and in *Restum Vs. Hapengama and Company* 2 SLR 225 held that the party applying revision must satisfy the court that there are exceptional grounds to invoke the revisionary jurisdiction of the court.

The Appellant had cited *Employer Vs Deputy Commissioner of Labour and Others*² and pleaded that he be allowed to call for evidence which the learned Magistrate had refused. When considering the judgment, Gunasekera J.had held, "In my view, it is open to the defaulter to controvert the position that the amount is due or that the amount has been incorrectly calculated by leading oral or documentary evidence."

¹ (2003) (3) 24 S.L.R.

² (1991) 1 S.L.R. p.222

The importance of this judgment is that the parties had agreed on the payment. In the instant case, the Appellant denies any payment. He had an opportunity to seek the intervention of a higher forum against the appeal made to the Commissioner-General of Labour. He should have been more vigilant in finding out the outcome of his appeal.

The learned Magistrate rightly had allowed showing cause and holding the inquiry by written submissions. Once the 8(1) papers are filed before the Magistrate, he has no power to discuss whether or not the people mentioned were employees.

Section 8(1) of the Payment of Gratuity Act NO.12 speaks of defaulters. It also states, "The Magistrate shall thereupon summon the defaulter before him to show cause why further proceedings for the recovery of the sum due as gratuity under this Act should not be taken against him....".

This proves that default exists when the certificate is filed in the Magistrate court.

In Deputy Commissioner of Labour Vs. Lanka Milk Food [C.W.E.] Limited CA(P.H.C.)APN 299/2003 had decided that;

"Under Section 8 of the Gratuity Act, when the Magistrate makes an order, he is only performing a ministerial function, and he does not impose a conviction/sentence/order after considering the facts of the case. Under Section 8 of the Act, the powers of the Magistrate's court is utilised to collect the sum decided by the Commissioner of Labour. Further, it is important to note that when the Magistrate makes an order under Section 8(1) of the Gratuity Act, he does not convict the defaulter, and the sum due from the employer is only deemed to be a fine imposed by the Magistrate."

When considering this judgment, it proves that the Magistrate has no power to call evidence to determine whether the persons named were employees.

The only point shown to the High Court was that evidence was needed to show the persons named were not employees. As discussed, the Magistrate is not able to look into this matter. Therefore,

the learned High Court Judge had correctly decided that no exceptional circumstance was shown to allow the revision application.

The second ground that the learned Magistrate had signed the minute disallowing the motion to call witnesses in Chamber does not violate any written law. The learned Magistrates singe all motions in chambers as they are administrative functions.

For reasons discussed above, I dismiss the Appeal of the Appellant subject to taxed cost and affirm the order dated 10.03.2016 in H.C./Rev/5/2015 by the learned High Court Judge of Kandy.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal