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

Seylan Bank PLC
No. 90, Galle Road,
Colombo 3.

PETITIONER

C.A 891/2009 (Writ)

Vs.

1. The Commissioner General of Labour
   Labour Department
   Colombo 5.
2. D.M.S. Dissanayake
   Commissioner of Labour
   Labour Department
   Colombo 5.
3. J.B. Weerasinghe
4. M. S. Mohideen
5. T. Abeykoon
6. P. Uduge
7. S. Weerakoon
8. M. S. M. Saleem
9. M. Ziard
10. V. K. Jayasiriya

11. N. R. Ranasinghe
12. A. K. Maddawatte
13. A. L. M. Chandrasiri
14. R. M. J. Rajapakshe
15. K. Ediriweera
16. C. Gamage
17. V.C. Hewakopara

RESPONDNETS

BEFORE: Anil Gooneratne J.
H. N. J. Perera J. &
Deepali Wijesundera J.

COUNSEL: Sanjeewa Jayawardena P.C., with Sandamali Chandrasekera
For the Petitioner

Janak de Silva D.S.G. for the 1st and 2nd Respondents

Suren Fernando for the 3rd to 12th, 14th, 16th and 17th Respondents

ARGUED ON: 29.05.2014, 04.06.2014, 25.06.2014 & 26.09.2014

DECIDED ON: 21.01.2015

GOONERATNE J.

The Petitioner Bank, namely 'Seylan Bank PLC' have sought Writs of Certiorari and Prohibition. The Writ of Certiorari to quash the order of the 1st and/or the 2nd Respondent (Commissioner of Labour) which order (P12) relates to payment of enhanced gratuity to each retired employee who has completed 10 years of unblemished service in the company (as described in P12). A Writ of Certiorari is also sought in the manner described in sub-para (c) of the prayer to the petition. Prohibition is sought as per sub para (d) of the prayer to the petition to prevent the 1st & 2nd Respondents compelling the Petitioner Bank to pay enhanced gratuity in terms of memorandum P5 of 05.10.2009.

It would be necessary for this court to refer to certain steps/events/orders made at various stages of the hearing of this application, prior to considering the main application before court. Subsequent to issue of formal notice on the Respondents, certain intervenient parties moved court to intervene in this application. However at the point of supporting for intervention the Petitioner as well as the Respondents agreed to accept documents produced and marked P4-1b P6 submitted along with the petition

of the intervenient Petitioners, as the documents form part and parcel of the writ application. Thereafter party seeking to intervene did not persue the application for intervention (Journal Entry of 31.01.2012 and 20.07.2012). Then during the course of hearing the learned President's Counsel who appeared for the Petitioner Bank, invited court to peruse document P12 and submitted that P12 does not contain any reasons. At that point of time learned Deputy Solicitor General who appeared for the 1st & 2nd Respondents replied learned President's Counsel and informed court that she would make available the record/departmental file maintained by the Commissioner of Labour, to enable court to arrive at a decision in that regard. Petitioner objected to learned D.S.G.'s application. As such this court by its order dated 20.06.2013 pronounced the order but there was no agreement between the two Judges who heard the case on this issue. However my brother Justice H.N.J. Perera never disputed the acceptable principle of law, but was critical of the role of the State. As such it was necessary to refer this application to the Hon. President of the Court of Appeal to nominate a Divisional Bench. Thereafter the then Hon. President of the Court of Appeal nominated a Divisional Bench to hear and conclude this application.

I would now consider the case of each party as presented to this court by way of oral and written submissions. Learned President's counsel for the Petitioner Bank submitted that in or about the year 2004 as an employee friendly measure, at that time to increase the statutorily mandated quantum stipulated by the payment of gratuity Act, to a full months pay per each year of service for employees who have more than 10 years of unblemished service. Thereafter internal memorandum P5 was issued. I think its necessary to incorporate in this Judgment the contents of P5.

"The Board of Directors has approved, in principle, increased gratuity payments for staff who have completed 10 years of unblemished service in the Bank. Due to the bank having to provide the entire amount payable as a provision, the management has decided to implement the said proposal on a staggered basis.

A provision of Rs. 50 Million will be made during this year and initially the enhanced benefit will be shared by the senior staff who have joined the bank in 1988, 1989 and 1990 , it should be noted that this enhanced benefit will not be applicable to staff who have resigned prior to 01st October 2004.

Further provision will be made during the year 2005 and beyond, based on the profitability of the Bank and the other staff who are entitled to the enhanced benefits under this scheme, will be informed in due course."

It is pleaded that the enhanced amounts in the manner indicated as in P5 was adopted and paid in view of the fact that at that time the Petitioner Bank was enjoying a profitable and financially successful period. Accordingly the employees identified as per P5 were paid enhanced gratuity. However as pleaded and submitted to this court, by about December 2008 a financial crisis emerged due to the Golden Key Credit Card Company Ltd., controversy. It was submitted that the Bank had to comply with unforeseen withdrawals and demands from depositors.

It was also submitted that due to severe financial crisis faced by the Petitioner Bank it was not possible to continue with the enhanced gratuity payment to its employees in the manner indicated in P5. As such the Petitioner Bank had no choice but to revert to the statutory half months pay which the Petitioner state a requirement of law in terms of the payment of Gratuity Act No. 12 of 1983. This had to be done in the best interest of the Petitioner Bank in long term for all concerned. In this regard the memorandum issued thereafter had been produced (P8). A complaint had been lodged against the Bank for its reversal procedure as stated above by 15 Bank employees, to the 1st and 2nd Respondents (P9(a) & P9(b)).

It is pleaded by the Petitioner Bank that an inquiry was held by the Commissioner of Labaour. There had been several dates of sitting where oral and documentary submissions were entertained. Important issues of law were raised concerning the applicability of Section 10 of the said Act. Petitioner Bank inter alia plead and stress that document P5 does not in any manner form or constitute an agreement. However at the conclusion of the above inquiry, the Commissioner of Labour made order by P12 and decided that the Petitioner Bank is liable to pay the enhanced gratuity (one month's salary). Learned President's Counsel in his submissions argued that the order made by P12 is illegal, ultra vires, arbitrary, unreasonable and in violation of the principles of natural justice. Learned President's Counsel vehemently argued that P12 does not give reason for its decision and that in any event P5 is not an agreement contemplated in terms of the provisions fo the Gratuity Act. Further P12 does not contain reasons.

The Petitioner Bank also relies on the Supreme Court Order of 23.10.2009 (P15) and states that the order has expressly excluded the Seylan Bank from the applications of the Order for transfer of shares and assets to the proposed special purpose vehicle. I would for purposes of clarity refer directly to the following paras of the Petitioner's petition where much emphasis is

placed by the Petitioner Bank to impress as to the difficulties faced by the Bank and the reason for non compliance with the order P12 as follows:

1. The petitioner states that in the event the petitioner bank is compelled to implement the said order of the 1st and/or 2nd respondent/s, the petitioner bank's inability to service such a large continuing liability (i.e: making provision for the payment of enhanced gratuity for a work force of approximately 4000) will effectively undermine the business of the petitioner bank substantially.
2. The petitioner bank has made several representations to the 1st and 2nd respondents requesting the 1st and the 2nd respondents to reconsider the issuance of the said order in the light of the attendant circumstances and very peculiar and special exigencies faced by the petitioner bank, apart from the clear issues of law in favour of the bank.
3. The petitioner states that in the event of the said order marked P12 being enforced against the petitioner Bank, the petitioner bank will be compelled to make a payment of Rs. 89 Million (for 2009 alone) which the petitioner bank will be unable to do in view of the severe financial hardship and commercial instability faced by the petitioner bank due to the unforeseen and unprecedented collapse of the entire Ceylinco Group.

Learned President's Counsel also submitted that P12 does not specify the statutory basis. He also emphasis that the words used in Section 10(1) as "other agreement" must be interpreted by resorting to the 'Eusdem Generis Rule'.

Learned Deputy Solicitor General in reply inter alia submitted that merely because P12 does not refer to a statutory provisions would not render P12 invalid as long as the Commissioner has power to do so. He invited this court to consider Section 8(1) of the Act and submitted that the Commissioner has power to act in compliance with the payment of Gratuity Act. learned Deputy Solicitor General argued that the position taken up by learned President's Counsel as regards the Eusdem Generis Rule' is misconceived in law, as it does not form a distinct genus or category.

It was also submitted on behalf of the 1st and 2nd Respondents that P5 is one such agreement and it includes any other agreement formed between the employer and employees. The ordinary principles of law of contracts of 'offer' and 'acceptance' and 'consideration' would apply to formation of a valid contract as in P5. Learned Deputy Solicitor General in his own way, sought to meet the argument of learned President's Counsel who demonstrated to this court about the drastic consequences that would flow if

court concludes that the Petitioner Bank should pay 1 month's salary, as there were large number of such employees, who could claim as per, P5. Learned Deputy Solicitor General contended that such financial commitment would not be a matter to be considered in an writ application, as the financial burden if at all is irrelevant. Having said so learned Deputy Solicitor General submitted that the learned President's Counsel was correct but if that be so Petitioner 's application need to be dismissed in limine for want of necessary parties. He relies in the case of Abayadeera and 162 others Vs.Dr. Stanley Wijesundera 1983 (2) SLR 267.

We also had the benefit to hear learned counsel who appeared for the 3rd – 12th, 14th, 16th & 17th Respondents (aggrieved party). He raised certain preliminary objections on suppression and misrepresentation of facts. Learned counsel inter alia submitted that by 1P4 a deed of settlement of 1996 by which the Seylan Bank Employees gratuity fund was established. Trust re-established by deed 1P5 which superseded 1P4. Document 1P9 suggest there was provisions made for payment of gratuity. These facts along with the financial position of the Bank was not disclosed to this court. Nor did the Petitioner disclose to this court the correct financial position, and suppressed the accounts. We have also considered the submissions of learned counsel on the

matter described in the sub title (summary of submissions) of the written submissions. No doubt same consists of relevant/interesting points pertaining to the case in hand. I need not refer to each and every items, so categorized but this court is certainly mindful of all those material contained in the written submissions.

Can the Writ Jurisdiction of this court be invoked to grant relief to the Petitioner Bank?

Petitioner Bank has sought a Writ of Certiorari as per sub para (b) & (c) of the prayer to the petition. In that Petitioner Bank invites this court to quash document marked P12 the decision of the 1st and 2nd Respondents. A Writ of Prohibition is sought to prevent the Commissioner of Labour (1st Respondent) from compelling the Petitioner to pay enhanced gratuity. The writs sought are no doubt discretionary remedies of this court. It is with that view in mind that justice need to be done to this case.

The payment of Gratuity Act was enacted on or about 1983. Legislation in this regard was introduced to give a right to the employee, to enable him to make a legitimate claim if such right was denied by the employer. Over the years the concept of gratuity matured from an ex gratia

payment to a legally acceptable right of an employee or as in today's context 'gratuity' is a legitimate claim of the employee or workman as provided by the payment of Gratuity Act. As such it is no longer an ex gratia payment. Further when the legislature has introduced a statute the capacity to pay, may not be a relevant consideration, especially where the employer himself has introduced an enhanced gratuity scheme. The Act no doubt prescribed a minimum gratuity payment of ½ month's salary for each year of service (Section 5(1) read with Section 6(2). However where there is any other agreement for such payment, the gratuity more favourable to the workman other than the specified minimum as aforesaid, gratuity shall be paid in terms of such agreement, under Section 10(1) of the Act.

However before I consider whether document P5 constitute a legally valid agreement, let me look at the provision of the statute, namely Section 10.

Section 10 reads thus:

(1) Where the gratuity payable to a workman is governed by a collective agreement, award of an Industrial Court or arbitrator under the Industrial Disputes Act or any other agreement, the computation of such gratuity in respect of his services shall be made in accordance with the terms of such collective agreement, award of an Industrial Court or arbitrator or other agreement as the case may be, provided that the gratuity or terminal

benefits set out therein are more favourable to the workman than the gratuity payable under this Act.

(2) No workman shall be entitled to a gratuity or terminal benefit in terms of any collective agreement, award of an Industrial Court or arbitrator or other agreement in addition to the gratuity under this Act or vice versa

When gratuity payable to an employee is higher than the statutory minimum, it is governed by any other agreement as in the case in hand. If it is so gratuity should be computed in accordance with such agreement, and the employer would be estopped from denying such benefit to an employee. The scheme of the Act contemplates in a broad sense two options.

(a) The statutory minimum of ½ month salary for each, year of service.

(b) An enhanced payment of gratuity based on any other agreement between the employer and employee. It could also be on a collective agreement or award (10(1)).

I observe that both (a) and (b) above fall within the four corners of the statute. To enter into 'any other agreement' is recognized by the payment of Gratuity Act itself and to provide for payment of enhanced gratuity. Therefore both (a) & (b) definitely contemplate the in built recovery procedure of the Act. I would go further in this regard and state it is a 'right' of an employee and not a privilege. As such an employee or workman would have a

legitimate expectation for payment of enhanced gratuity which cannot be exploited/denied by the employer, on any account. I cannot accept and agree with the views expressed contrary to above on behalf of the Petitioner Bank.

I reject the absurd argument advanced on behalf of the Petitioner Bank that "gratuity more favourable" does not fall within the scope of the process of recovery under this Act. The two options described above no doubt caters also to a recovery procedure, in built within the four corners of the statute. The legislation would never unnecessarily confuse the two options when the recovery procedure has to be invoked. What was given by one hand cannot be prevented by the other. If the employer thought it fit to pay enhanced gratuity, he cannot at a subsequent stage explain the position due to other reasons and limit the recovery procedure to the lesser amount of ½ month's salary. Section 10, though fall within part III, (General) the recovery procedure under Section 8 of the Act has been kept intact. The words used under Section 8 do not in any event contemplate to separate the options (a) & (b) described above, when the question of recovery surface. That cannot be the intention of the legislature especially where this type of social legislature is enacted for the benefit of the employee and workman. I am unable to accept learned President's Counsel's argument of separating the Part I, II & III to

demonstrate in whatever method adopted to make it look more acceptable and convenient to the employer.

A statute is to be read as a whole. It was resolved in the case of Lincoln College that the good expositor of an Act of Parliament should "make construction on all the parts together, and not of one part only by itself". Every clause of a statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment as the whole statute. Maxwell on Interpretation of Statutes 12th Ed. Pg. 47.

I am also guided by the following rules and principles of interpretation which are universally accepted in all refined legal systems.

Construction ut res magis valeat quam pereat (Pg. 45)

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result". "Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty,, friction or confusion into the working of the system."

In accordance with these principles, the court should avoid interpretations which would leave any part of the provision to be interpreted without effect, will not narrow enactments designed to prevent tax evasion, may sometimes find it necessary to depart from the

principle that mens rea is an essential ingredient of criminal offences, and ma give a wide sense to words in a penal statute.

In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. The question of inconvenience or unreasonableness must be looked at in the light of the state of affairs at the date of the passing of the statute, not in the light of subsequent events (Pg 199).

I am unable to agree that as contended on behalf of the Petitioner Bank that, "other agreement" must be interpreted by resorting to 'eusdem generis rule'. It is highly misconceived in law. I agree that collective agreement, award under the Industrial Disputes Act does not form a distinct genus or a category. Collective agreement is a contractual bargain but not an award. I cannot find any ambiguity in the words used in Section 10. Language is simple and plain. In Shiyam Vs. OIC Narcotics Bureau and another 2006(2) SLR at pg. 160/161.

Ejusdem Generis, as stated in Bangolore Electric Supply Col Ltd. V. CIT, West Bengal is not a rule of law, but a rule of construction, which would enable a Court to ascertain the intention of the legislature. The rule is applicable only when particular words, which belong to a class, category or genus, are followed by general words. Referring to this doctrine, Bindra (International of Statutes, 9th Edition, pgs. 684-685) clearly states that, the rule "requires to be applied with great caution and not pushed too far so as to unduly or unnecessarily limit general and comprehensive words to dwarf size. He further states that,

> "The rule of ejusdem generis is not one of universal application. It is merely a rule of construction and as such it may be of no assistance when the intention of the legislature is so plain as to require no resort to cannons of construction. The rule is to be made use of only where the language of the statute under consideration is somewhat vague or uncertain. The rule of ejusdem generis is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are constructed as limited to things of the same kind as those specified. The rule applies only when;

(a) The statue enumerates the specific words.
(b) The subjects of enumeration constitute a class or category;
(c) That class or category is not exhausted by the enumeration;
(d) The general terms following the enumeration; and
(e) There is no indication of a different legislative intent".

In terms of Section 8(1) of the payment of Gratuity Act if there is a default of <u>any sums due</u> as gratuity under the Act commissioner may issue a certificate to the Magistrate after such inquiry. The Commissioner is empowered to conduct an inquiry and letter P12 was issued after a due

inquiry, and in consideration of all documentary material inclusive of document P5. In considering P5, as an agreement it is essential to consider the basics in the law of contracts re-offer and acceptances and 'consideration'. Document P5 is an offer to all staff of the Petitioner Bank. Board of Directors have decided to pay increased gratuity according to P5. Such an offer can be made to a class of persons. Board gives its approval for such an increase. 2R1 also refer to the one month's period. Acceptance of an offer can be by words or conduct. If the offer takes the form of a promise in return for an act, the performance of that act is itself an adequate act of acceptance – Weeramantry Law of Contracts P120 – 124.

There is also no dispute that the Petitioner Bank made payment over the years to its retired employees. Petitioner paid gratuity to some who completed 10 years. That would be acceptance by conduct. My attention has been drawn to document A15 (annexed to P11) which is an extract from the Seylan Bank annual report for 2007. This confirm the adoption of the formula. Annual report is made public and given to its share holders and Registrar of Companies. This is an additional liability.

There is also material to state that the Petitioner Bank has established a Gratuity Trust Fund. Further A15 &A16 annexed to P11 support additional payment of gratuity. P7 would be another regular document. Letter A17-A20 (annexed to P11) refers to payment of one month's salary were not disputed. All these items of evidence taken together demonstrate a valid agreement between parties. I have no hesitation in accepting the submissions made on behalf of the Respondents in this regard. There is acceptance by conduct and also express words to conclude that parties no doubt had an agreement for payment of enhanced gratuity.

It was also argued that P12 does not specify the statutory provisions under which it is made. Our courts have in a long line of cases held that as long as the Authority has the power to do a thing, it does not matter if he purports to do it, by reference to a incorrect provisions of law, if the order could be justified by reference to a correct provisions in law. 65 NLR 457; Edirisuriya Vs. Navaratnam (1985) 1 SLR 100 at 114; Fernando Vs. A.G and Another (1983) 1 SLR 374 at 383; Samalanka Ltd. Vs. Weerakoon Commissioner of Labour & Others (1994) (1) SLR 405 at 410. The 1st & 2nd Respondents has the power to inquire and decide according to the provisions of the payment of Gratuity Act. No prejudice had been caused to the Petitioner more so as the Petitioner

participated at the inquiry before the 1st Respondent. This sort of objection is not so significant.

There was another matter very strongly urged by learned President's Counsel, that decision P12 does not contain any reasons. If one peruse P12, it is apparent that it is devoid of reasons. I have already dealt in this judgment that by order of 20th June 2013 different views were expressed, but there was consensus of the two Judges as regards the constitutional provisions contained in article 140 of the Constitution i.e power derived as per Article 140 to call for, inspect and examine the record. If the record maintained by the 1st & 2nd Respondents does not contain reasons, learned President's Counsel's argument is more then sound to succeed in this application. It is now a recognized concept of natural justice that an order of this nature (P12) need to contain reasons. However the provisions contained in the basic law of the country on the other hand cannot be ignored and due consideration need to be given to Article 140 of the Constitution. Having resorted to this power I had the benefit of perusing the formal record maintained by the Commissioner of Labour, wherein the following material were contained in his departmental file bearing No. IR/10/55/2009. Folio 18 of same contains the reason and I would list such reasons contained in the relevant portions of folio 18.

මේ සම්බන්ධව සේවය සම්මේලනයේ අධ්‍යක්ෂ ජනරාල් රවී පිරිස් මහතා විසින් පෙන්වා දෙන කරුණු (14) පිට ලිපිය මගින් දක්වයි. ඒවා පිලිගැනීමට පාත්‍ර වීම පිලිබඳව ගැටළු පැන නගී. ඔහු දක්වන වැදගත් තර්කය වන්නේ ආයතනය තුල නිත්‍යානුකුල ප්‍රතිපත්තියක් ගොඩනැගී නොතිබුණ බවය. (14-3) හි 9 වන ඡේදය ඒ බව කියයි. එය පිලිගත් නොහැක්කේ පහත කරුණු නිසාය.

1. "A 14" ඇමුණුමෙන් G.M/M/04-0481 යටතේ 2004.10.05 දිනින් චක්‍රලේඛ නිකුත් කිරීම හා ඒ අනුව විශ්‍රාම ගිය අයට මේ දක්වා ගෙවා තිබීම. (A14) කොඩි කර ඇත) විශාල ප්‍රමාණයක් ඒ අනුව භුක්ති විඳ ඇත.
2. නව අධ්‍යක්ෂ මණ්ඩලය පත් වීමෙන් පසු මෙම ගෙවීම 09 දෙනෙකුට ගෙවා ඇත. (17-3) පිට ඒ බව සඳහන්ය එයද කොඩිකර ඇත
3. තවද සෙලාන් බැංකුවෙ 2007 වාර්ෂික වාර්තාවේ වසරකට මසක ගෙවීම ප්‍රතිපත්තියක් ලෙස පිළිගෙන එය ප්‍රතිපාදන වෙන් කර ඇත (17-6) පිට බලන්න කොළ පැහැ කළ කොටස බලන්න.
4. (17-8) පිට බලන්න ඉහත ප්‍රතිපත්තිය මත වෙන් කළ මුදළ වාර්ෂික වාර්තාවේ සංඛ්‍යාත්මකව පෙන්වා ඇත නමුත් 2008 වර්ෂයේ නව අධ්‍යක්ෂ මණ්ඩලය එම වෙන්කිරීම ලාභයක් ලෙස දක්වා සදා තිබීම ඕනෑකමින් සිදුකර ඇත.

ඉහත කරුණු 17 සිට 17 ට ඇමුණුම් සියල්ලෙන්ම පෙන්වා ඇත ගොනුවේ සේවක ප්‍රකාශන සියල්ලේම ඔවුන්ගේ ඉල්ලීම්වල පදනම මුල සිට දක්වයි.

මේ අනුව මගේ අදහස වන්නේ පාරිතෝෂිත ගෙවීම නොකලහොත් නඩු පවරා අය කිරීමට කම්කරු දෙපාර්තමේන්තුවට හැකිබවය.

In Karunadasa Vs. Unique Gems Stones Ltd. and Others 1997 (1) SLR 257 at 264 Mark Fernando J. whilst appreciating that the judgment of the Court of appeal that natural justice required that reasons be given be affirmed, had the following to add.

But that does not end the matter. The legal position was not clearly appreciated, and the parties do not seem to have realized the need to invite the Court of Appeal to call for and examine the record and the recommendation. In the course of the hearing in this Court Mr. Kamalasabayson tendered copies of the recommendation made by the 3rd respondent, and undertook to make the 2nd respondent 's file available whenever required. The 1st respondent consented, in the interest of justice, to the case being re-heard by the Court of Appeal, after calling for and examining the record and the recommendation. I made order accordingly. There will be no costs. I must place on record our appreciation of the manner in which Mr. Kamalasabayson assisted this Court.

In view of the above views of Fernando J. I am more confident to accept the position that the Commissioner of Labour had reasons to issue P12 as stated above. As such I am unable to react in the manner urged by learned President's Counsel.

This court is of the view that in all the facts and circumstances, the order P12, to pay enhanced gratuity is justified. Nor can this court interfere in the order made by the Commissioner of Labour and grant relief to the

Petitioner Bank, which payments are long overdue to the Respondents who were former employee of the Petitioner Bank. Jurisdiction of this court to grant relief in an application for writs is a discretionary remedy vested in court. We do not wish to extend such jurisdiction in favour of the Petitioner Bank. This is a clear case of a statutory due for which the employee of the Bank would be entitled, according to the scheme reflected in document P5 and other connected documents. However those employees who did not complain to the Commissioner against Memorandum P8 of 29.4.2009, seems to have accepted the statutory minimum of half months salary. As such we proceed to dismiss this application with costs.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

H. N. J. Perera J.

I agree.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL