

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

In the matter of an Application for  
Revision in terms of Article 138(1) of  
the Constitution.

Assistant Labour Commissioner,  
District Labour Office,  
Haputale.

**Court of Appeal (PHC) APN  
Revision Application No: 92/2011**

**Complainant**

**Vs.**

W.G.N.S. Ranaweera,  
The Universal Works (Textiles)  
Project,  
Ganaeyaya Road,  
Thanamalvila.

Moneragala High Court  
Revision Application No: 14/2009

**Defendant**

**AND**

W.G.N.S. Ranaweera,  
The Universal Works (Textiles)  
Project,  
Ganaeyaya Road,  
Thanamalvila.

**Wellawaya Magistrate's Court  
Case No: 40255 (EPF)**

**Defendant –  
Petitioner**

**Vs.**

Assistant Labour Commissioner,  
District Labour Office,  
Haputale.

**Complainant –**  
**Respondent**

**AND NOW BETWEEN**

Assistant Labour Commissioner,  
District Labour Office,  
Haputale.

**Complainant –**  
**Respondent –**  
**Petitioner**

**Vs.**

W.G.N.S. Ranaweera,  
The Universal Works (Textiles)  
Project,  
Ganaeyaya Road,  
Thanamalvila.

**Defendant – Petitioner –**  
**Respondent**

**Before : W.M.M.Malinie Gunarathne, J**  
**: P.R.Walgama, J**

**Counsel : Janak de Silva A.S.G. for the Complainant –**  
**Respondent – Petitioner.**  
**: G. Attanayake for the Deferent – Petitioner –**  
**Respondent.**

**Argued on : 31.03.2015**

**Decided on : 29.01.2016**

CASE -NO- CA(PHC) APN - 92/2011 –JUDGMENT - 29.01.2016

**P.R.Walgama, J**

This appeal is directed against the order of the Learned High Court Judge dated 01.06.2011 and the order of the Learned Magistrate dated 30.01.2009.

The Complainant - Respondent filed a Certificate in the Magistrate Court of Wellawaya in terms of Section 38(2) of the Employees Provident Fund Act No. 15 of 1958 as amended by Act No. 08 of 1971 and No. 01 of 1985, for the recovery of sum of Rs. 1913273.80 (as stated in the document marked as X1) as the Provident fund and surcharge due to the employees of the Respondent Company.

Pursuant to the filing of the above certificate, the Learned Magistrate has issued summons on the Respondent to show cause as to why the said amount should not be recovered from him.

It was contended by the Complainant that once the certificate is tendered to Court, the Court should take steps to recover the amount stated therein from the Respondent as a fine.

The Counsel for the Respondent has urged Court to placed before Court as to the reason why he could

not pay the aforesaid amount. The Learned Magistrate has refused the said application and held that the settled law does not permit for such procedure and ordered that the Respondent is liable to pay the amount as stated before.

Being aggrieved by the said order the Respondent – Petitioner has made an application in Revision to the Provincial High Court in Uva Province holden at Monaragala, seeking to vacate the said order of the Learned Magistrate in the case No. 40255 in the Magistrate Court Wellawaya.

The Learned High Court Judge by his order dated 01.06.2011 has granted relief sought by the Respondent- Petitioner by setting aside the order of the Learned Magistrate as stated above.

The Learned High Court Judge has based his determination what was envisaged in the case of KODAGODA ARATCHIGE DAYAWATHI .VS COMMISSIONER GENERAL OF LABOUR- decided on 10.06.2009 in F/R -241/08.

It is stated in the said Judgment that as per Section 38(2) of the Employees Provident Fund Act, in filing action the Plaintiff should comply with the Section 17 to 38(1) by instituting action in the District Court. Further more there must be a certificate filed in the Magistrate Court along with the plaint.

It was thus held in the said case;

“The 3<sup>rd</sup> Respondent had no jurisdiction or power under the said statute to file a certificate in the Magistrate’s Court in terms of Section 28(2) of the EPF Act without first proceeding under Section 17 and thereafter under Section 38(2) of the said Act.”(emphasis added)

Therefore it was held by the Learned High Court Judge that the Plaintiff should first file action in the District Court to recover the due sum and only if the plaintiff fails to recover the said sum he could file the certificate in the Magistrate Court to recover the same.

Being aggrieved by the said order the Complainant-Respondent – Petitioner made this application by way of Revision seeking to set aside the order of the Learned High Court Judge accordingly.

It is averred by the Petitioner that the Learned High Court Judge had erred in law by misinterpreting the contents of the Supreme Court Judgment dated 01.06.2009 in case of Dayawathi .vs. Edirisinghe which has expressly stated and had recognised thus “that if only the Commissioner is of the opinion that recovery under Section 17 of the said Act is (1) impracticable and inexpedient, and/ or (2) where the full amount due has not been recovered by seizure and sale, only then can recovery be made”.

Therefore it is contended by the Petitioner- Appellant that the Learned High Court Judge has erred in law in acting under Section 38(2) without being satisfied with the fact that the Commissioner of Labour has himself considered whether it was impractical and inexpedient to take steps under Section 17 and 38(1) of the EPF Act, before proceeding to file a certificate in terms of Section 38(2) of the said Act. Hence it is stated that in the above case the determination of the said case is only an 'obiter dicta' and not the 'ratio decidendi'.

In the said backdrop it is clear that the intention of the Legislature was to give power to the Commissioner to decide whether it is practical and expeditious to first resort to the recovery procedure in the District Court, and if not resort to institute proceedings in the Magistrate Court for speedy recovery, of the money due to the employees in the Company.

It is apparent that the present application to this Court is by way of a Revision although the right of appeal was available to him. But it is stated that due to the delay in obtaining the relevant document from the High Court the appealable period had lapsed. Therefore the Complainant - Respondent - Petitioner has come by way of Revision to this Court.

The Petitioner has also adverted this Court to a judgment delivered by the Court of Appeal dated 09.05.2011 in the case of CHAIRMAN EMPLOYEES PROVIDENT FUND .VS. AGRO TRADING LANKA (PVT)-CA(REV) 1/2010. Wherein the Court has considered the said judgment but also held in the light of the ratio decidendi of other judicial decisions, if the Commissioner is of the opinion that it is impractical or inexpedient to recover the sum under Section 17 or under Section 38(1) of the EPF Act there is no necessity for the Commissioner to have first resorted to the other two remedies provided in Section 17 and 38(1) before instituting proceedings in the Magistrate's Court.

It is further contended by the Petitioner – Appellant that he was not afford an opportunity to state, whether the Commissioner was of the view that it is impractical or inexpedient to recover the sum as stated herein before under Section 17 of the said Act. Therefore it is said that the Learned High Court Judge has erred in allowing the Revision application of the Respondent – Petitioner on the basis of Dayawathi's case.

It also intensely relevant to note that the Respondent has to deposit with the Complainant a colossal amount of money as revealed by the document marked X1.

Therefore in the above context it is worthy to mention that the Learned High Court Judge has interpreted erroneously the Section 38(2) of the said Act.

In the above setting this Court is of the view that the Learned High Judge's order is perverse and ~~it~~ should be set aside, and ~~allow~~ the Application of the Complainant-Respondent-Petitioner be allowed and should give effect to the order of the Learned Magistrate, to recover the amount due accordingly.

Application is allowed.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**