

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

*In the matter of an Application for a  
mandate in the nature of Writ of  
Mandamus in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

C A (Writ) Application No. 370 / 2013

C A (Writ) Application No. 371 / 2013

C A (Writ) Application No. 372 / 2013

C A (Writ) Application No. 373 / 2013

C A (Writ) Application No. 374 / 2013

Gunadasa Gajanayake,  
39/1,  
Watareka Road,  
Bope,  
Galle.

(Petitioner in Application No. 370/2013)

Palliyaralalage Don Paul,  
No. 124/1,  
Seneviratne Pedesa,  
Kalutara South.

(Petitioner in Application No. 371/2013)

Donald Wijemuni  
"Nissansala"  
Kumara Mawatha,  
Patuwatha,  
Dodanduwa.

(Petitioner in Application No. 372/2013)

Lekamwasam Liyanage Rathnajothi,  
73,  
Wadugoda,  
Hikkaduwa.

(Petitioner in Application No. 373/2013)

Jinadasa Wijenayake,  
85/C/11 B,  
Bangalawatte Road,  
Ranmuthugala,  
Kadawatha.

(Petitioner in Application No. 374/2013)

**PETITIONERS**

-Vs-

1. Mrs. W D C Amarathunga,  
Commissioner General of Labour,  
Department of Labour,  
Labour Secretariat,  
Colombo 05.
2. P S Pathiratne,  
Senior Legal Advisor,  
Department of Labour,  
Labour Secretariat,  
Colombo 05.
3. H R L Sugathadasa,  
Assistant Commissioner of Labour,  
District Office,  
Kalutara.  
(3<sup>rd</sup> Respondent only in C A Writ Application  
No. 370/2013)

Podinilame  
Assistant Commissioner of Labour,  
District Office,  
Kalutara.  
(3<sup>rd</sup> Respondent only in C A Writ Application  
No. 371 /2013)

W W Punchihewa,  
Assistant Commissioner of Labour,

District Office,  
Kalutara.

(3<sup>rd</sup> Respondent only in C A Writ Application  
No. 372 /2013)

W W Punchihewa,  
Assistant Commissioner of Labour,  
District Office,  
Galle.

(3<sup>rd</sup> Respondent only in C A Writ Application  
No. 373, 374 /2013)

4. Sri Lanka Transport Board,  
No. 200,  
Kirula Road,  
Colombo 05.

5. Hon. Attorney General,  
Attorney General's Department  
Colombo 12.

**RESPONDENTS**

**Before:      Vijith K Malalgoda PC J (P/CA)**

**P Padman Surasena J**

Counsel:    Daya Guruge with Rohitha Wimalaweera and Kusum Liyanage  
for the Petitioner.

Ranil Samarasuriya with Nalaka Samarakoon for the 4<sup>th</sup>  
Respondent.

Suranga Wimalasena SSC with Manohara Jayasinghe for the 1<sup>st</sup>,  
2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents.

Argued on :      2016 - 08 - 29

Decided on :     2017 - 01 - 30

**JUDGMENT**

**P Padman Surasena J**

When these cases were taken up for argument on 2016-08-29, all the parties agreed that the issues to be decided by this Court in respect of the cases namely,

C A (Writ) Application No. 370 / 2013,

C A (Writ) Application No. 371 / 2013,

C A (Writ) Application No. 372 / 2013,

C A (Writ) Application No. 373 / 2013,

C A (Writ) Application No. 374 / 2013,

are the same, and hence agreed that it would suffice for this Court to pronounce one judgment in respect of all the above cases. Hence this judgment must apply to all the cases above referred to.

Petitioners in these applications had been employees of Ceylon Transport Board (CTB).

Ceylon Transport Board (CTB) was established under the Motor Transport Act No. 48 of 1957 with effect from 1958-01-01.

The Transport Board Law No. 19 of 1978 repealed the said Motor Transport Act No. 48 of 1957 and in turn established Sri Lanka Central Transport Board (SLCTB) with effect from 1978-06-15.

Subsequently 10 regional Transport Boards were established under SLCTB.

With effect from 1990-12-28, 93 depots under the above 10 regional Transport Boards belonging to the SLCTB were converted to peoplised

companies under the Conversion of Public Corporations or Government Owned Business Undertakings in to Public Companies Act No. 23 of 1987.

By Act No. 37 of 1991, National Transport Commission (NTC) was established and entrusted the task of regulating the transport services which were being provided by the SLCTB and the peoplised companies.

The peoplised companies were converted into companies in terms of section 2 of the Conversion of Public Corporations or Government Owned Business Undertakings in to Public Companies Act No. 23 of 1987.

The Petitioners have retired from the respective Bus Companies upon reaching 60 years which is the compulsory age of retirement.

The 3<sup>rd</sup> Respondent (Assistant Commissioner of Labour) had calculated the gratuity payable to each of the Petitioners in terms of the Payment of Gratuity Act No. 12 of 1983, as amended by Act No. 41 of 1990 and Act No. 62 of 1992 and directed the 4<sup>th</sup> Respondent (SLTB) to deposit the respective sums of money on or before a particular date in favour of the Petitioners.

In terms of Section 33 of the Act No: 27 of 2005 which established the Sri Lanka Transport Board (the 4<sup>th</sup> Respondent), all assets and liabilities of the said bus Companies were vested in the 4<sup>th</sup> Respondent and accordingly the 4<sup>th</sup> Respondent has become the body which is now liable to settle the gratuity due to the Petitioners.

It is the complaint made by the Petitioners to this Court that the 4<sup>th</sup> Respondent had failed and neglected to comply with the aforesaid direction of the 3<sup>rd</sup> Respondent dated 01.05.2010 and no action was taken by the 3<sup>rd</sup> Respondent to file the required certificate in the relevant Magistrate's Courts against the 4<sup>th</sup> Respondent to implement the payment of gratuity referred to above.

The Court of Appeal in an application filed by the 4<sup>th</sup> Respondent seeking a Writ of Certiorari, has held as follows. (The Court of Appeal judgment in C A. Writ application No. 143/2003 is produced marked **P 4**).

" ..... In the instant case even though the employees were given new letters of appointments they continued in their employment without a break in service in the same capacity with the Petitioners after the Petitioner's Companies were formed. Therefore at the end of the period of



service of the employees the Petitioners are liable to pay gratuity for the entire period of service of the employees after deducting the gratuity if any was already paid. The order of the commissioner in this regard is therefore legal and the Petitioner has not shown any ground to set aside the said order of the Commissioner and hence the application of the Petitioner is dismissed without cost. .... "

As the 1<sup>st</sup> Respondent has failed to take action against the 4<sup>th</sup> Respondent to recover the gratuity due to them, the Petitioners, pray from this Court a Mandate in the nature of Writ of Mandamus be issued directing the 1<sup>st</sup> Respondent to initiate proceedings in the Magistrate's Court against the 4<sup>th</sup> Respondent and directing the 4<sup>th</sup> Respondent to pay gratuity due to the Petitioners.

It is the position of the Respondents that when bus depots were peoplised in 1990, the employees of those Peoplised Deports that were converted in to Companies were given the following benefits;

- (a) Two week's salary for each year of service as compensation called peoplisation compensation although they continued in service;
- (b) Two week's salary for each year of service as gratuity although they continued in service;
- (c) Shares based on the service and last salary drawn;
- (d) Continuous employment with the Peoplised Companies with all benefits and facilities they enjoyed at the SLCTB.

However it is the Respondents position that only about 50,000 employees opted to get the above benefit, and about 4,000 employees opted out of the Peoplisation Programme and those employees were not given any of the above benefits. The employees who have opted out from receiving the above benefits mainly belonged to SLCTB Head Office and the Regional Offices.

In these circumstances, it is the 4<sup>th</sup> Respondent's position

- I. that the gratuity that is legally due to the Petitioners have already been paid.
- II. that there is no further gratuity that is due / payable to the Petitioners by the 4<sup>th</sup> Respondent.

- III. that therefore, subsequent calculation made by the 3<sup>rd</sup> Respondent (**P2**) is contrary to the provisions contained in the said Act
- IV. that there is no agreement by the 4<sup>th</sup> Respondent as envisaged by Section 10 of the Payment of Gratuity Act to pay one month's salary for each year of service.
- V. that the gratuity to retired employees should be paid from the date of their first appointment to the date of retirement from the Peoplised/Cluster Bus Companies, after deducting the gratuity already paid.
- VI. that the mere fact that the Cluster Bus Companies have passed resolutions by their respective Board of Directors to enhance the rate of payment of gratuity from two weeks to one month per year of completed service only in 2001, 2002, 2003 and 2005, does not legally bind the 4<sup>th</sup> Respondent to pay such amounts.
- VII. If they had passed a resolution for payment of one month with retrospective effect it would appear mala fide.
- VIII. that the former Cluster Bus Company employees should be paid ' gratuity at the rate of one month per each year of completed service on retirement from the date of peoplisation up to the date of

retirement and 02 weeks salary from the date of first appointment to peoplisation on their last drawn salary, after deducting the gratuity already paid at the time of peoplisation.

- IX. in the circumstances, any gratuity which the Petitioner can claim must be calculated on the basis that the starting point for calculation of gratuity was 28.12.1990 and the enhanced rate could be applied only from the effective date stated in the resolution marked **4 R 9**.
- X. the Petitioner when he joined the Poeoplised Company in 28.12.1990 was paid gratuity amounting to 2 weeks' salary calculated on the basis of the salary he drew on that day per month. Therefore, the legal Gratuity payable up to that date had been paid and accepted by the Petitioner.
- XI. when the peoplisation occurred, 2 weeks' gratuity was paid although the employee did not retire and continued as an employee of the Peoplised Company.
- XII. The Petitioner was employed in the Ruhunu Bus Company Limited and the Resolution of this Cluster Company was passed on 2002 10-16 marked **4 R 9** according to which the operative date is 2002-10-16.

It must be observed that the Court of Appeal has not specified clearly about the rate of payment of gratuity i.e. Whether it was 02 weeks or one month per year of completed service.

It appears that there was no unambiguous determination made either by the award of the 1<sup>st</sup> Respondent or in the judgment of the Court of Appeal with regard to the rate of payment of gratuity whether it should be 02 weeks or one month salary per year of completed service. The only emphasis in the Court of Appeal judgment was that the gratuity should be paid for the continued period from the date of first appointment to the date of retirement.

It is necessary at this stage to see the nature of the reliefs that the Petitioners have prayed from this Court in the instant case. They have prayed for the following two principle reliefs.

- I. a writ of Mandamus directing the 1<sup>st</sup> Respondent to initiate legal proceedings against the 4<sup>th</sup> Respondent.
- II. a writ of Mandamus directing the 4<sup>th</sup> Respondent to pay gratuity due to the Petitioner.

Petitioners have admitted the receiving a part of gratuity. They also have admitted that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have instituted cases in the Magistrate's Courts for the recovery of part of gratuity due to the Petitioners.

In the light of the above admissions the Petitioners have failed to satisfy this Court that a definite sum of money is still due to them as gratuity according to law, payable by the 4<sup>th</sup> Respondent.

In these circumstances this Court is of the view that this is not a fit case in which this Court should exercise its discretionary writ jurisdiction against the Respondents.

Hence all the following applications namely:

C A (Writ) Application No. 370 / 2013,

C A (Writ) Application No. 371 / 2013,

C A (Writ) Application No. 372 / 2013,

C A (Writ) Application No. 373 / 2013,

C A (Writ) Application No. 374 / 2013,

are hereby dismissed. This court makes no order for costs.

Applications dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**