

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

In the matter of an Application for Revision
of the judgement dated 09.06.2015 in Case
No: HCRA 136/2013 of the High Court of
Colombo under Article.138 of the
Constitution.

1. Paul Newman Wijeyarathne

2. Sharmila Chrishanthi De Silva,

Both of 5/10, Sramadhana Mawatha,

Pagoda,Nugegoda.

Presently of, 211/1, Polhengoda Road,

Colombo 05.

Defendants-Petitioners-Appellants-Petitioners

Case No. CA/PHC/APN/105/2015

H.C. Colombo HCRA No:136/2013(LBO)

Vs.

M.C. Nugegoda Case No. 14206(Labour)

Commissioner General of Labour,

Department of Labour,

Colombo 05.

Complainant-Plaintiff-Respondent-

Respondent-Respondent

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

Respondent-Respondent-Respondent

Vidarshana Bimal Fonseka,
No.44, Park Road,
Rathmalana.

Intervenient Petitioner-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Muditha Premachandra for Defendants-Petitioners-Appellants-Petitioners

Suranga Wimalasena Senior State Counsel for Complainant-Plaintiff-Respondent-Respondent-Respondent and Respondent-Respondent-Respondent

J.P. Gamage for Intervenient Petitioner-Respondent

Written Submissions tendered on:

Defendants-Petitioners-Appellants-Petitioners on 16.07.2018

Intervenient Petitioner Respondent on 14.09.2018

Argued on: 07.06.2018

Decided on: 25.01.2019

Janak De Silva J.

This is a revision application against the judgment of the learned High Court Judge of Colombo dated 09.06.2015.

The Intervenant Petitioner-Respondent (Intervenant Respondent) was employed by a company named Fashion Tex International (Pvt) Ltd. He made a complaint to the Complainant-Plaintiff-Respondent-Respondent-Respondent (Complainant) that his wages had not been paid. After an inquiry held in terms of section 3D (1) of the Wages Board Ordinance as amended (Ordinance) the Complainant issued a certificate directing the Defendants-Petitioners-Appellants-Petitioners (Petitioners) to pay the Intervenant Respondent a sum of Rs. 1,974,140/= as unpaid salaries.

As the Petitioners failed to comply with the said order, the Complainant filed a certificate under Section 3D (2) of the Ordinance in the Magistrates Court of Nugegoda in the above styled action to recover the said sum of Rs. 1,974,140/= as a fine.

The Petitioners appeared before the Magistrates Court and objected to the said application. After inquiry, the learned Magistrate delivered order on 27.08.2013 and directed the recovery of the said sum from the Petitioners as a fine. The Petitioners thereafter moved by way of revision to the High Court of Colombo. The learned High Court Judge dismissed the said application and hence this appeal by the Petitioners.

Scope of Proceedings under Section 3D (2) of the Ordinance

The Ordinance sought to regulate the wages and other emoluments of persons employed in trades. Section 3D of the Ordinance makes provision for the recovery of arrears of wages in certain cases. Section 3D (1) of the Ordinance allows the Commissioner of Labour (Commissioner) to assess the wages or the short payment of wages of a worker on the basis of all the evidence both oral and documentary available to him. Section 3D (2) of the Ordinance provides for the recovery of the said sum as a fine by issuing a certificate to the Magistrate having jurisdiction. Section 3D (3) of the Ordinance provides that the correctness of any statement in a certificate issued by the Commissioner for the purpose of that section shall not be called in question or examined by the court in any proceedings.

In ascertaining the scope of the proceedings before the Magistrate commenced upon a certificate filed in terms of section 3D (2) of the Ordinance, it is permissible to consider Acts of Parliament which are *in pari materia*. In *Crosley v. Arkwright* [(1788) 2 T.R. 603, 608, (1788) 100 E.R. 325, 328] Buller J. held that all Acts relating to one subject must be construed *in pari materia*.

The wording in section 3D (3) of the Ordinance is identical to the wording in section 38(3) of the Employees' Provident Fund Act No. 15 of 1958 as amended (EPF Act). I am of the opinion that the Ordinance and the EPF Act are Acts *in pari materia* as they deal with labour relations with a view to safeguarding the interest of the worker.

The provisions in section 38(3) of the EPF Act was interpreted by the Court of Appeal in *Attorney General v. City Carriers Ltd.* [(1991) 1 Sri. L. R. 227] to mean that the only permissible defences before the Magistrate are:

- (a) Employer has already paid the amount due
- (b) The Employer is not the defaulter
- (c) The certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings

In the appeal the Supreme Court held in *City Carriers Ltd. v. The Attorney General* [(1992) 2 Sri. L. R. 257] that the certificate in question did not contain the particulars of the sum claimed and as such there was no certificate filed before the Magistrates Court in terms of section 38(2) of the EPF Act and accordingly this is a matter that can be raised by the employer.

In *Mohomed Ameer and another v. Assistant Commissioner of Labour* [(1998) 1 Sri. L. R. 156] the Supreme Court after a detailed analysis of the relevant provisions held that in relation to proceedings initiated under section 38(2) of the EPF Act, two questions arise.

One is the requirement of **form** which addresses the question whether the certificate filed sufficiently sets out the particulars required by section 38(2) of the EPF Act. It must name or otherwise adequately identify the employees in respect of whom the default is alleged and that (at least) where the default is alleged in respect of a period during which there have been changes in remuneration and/or rates of contributions, the remuneration in relation to which the

contributions and default has been computed must also be disclosed. Where these particulars are not contained in the certificate filed, it results in the formal invalidity of the certificate which is a matter that can be raised before the Magistrate.

The second question is whether the statements in the certificate filed can be challenged which is referred to as a question relating to **proof**. Section 38(3) of the EPF Act prevents any such challenge to the correctness of the statements in the certificate. Accordingly, a person summoned before the Magistrate is prevented from assailing the certificate on such grounds.

Accordingly, where proceedings are instituted in terms of section 38(2) of the EPF Act, the available defences for the employee summoned are as follows:

- (a) The certificate is not a certificate within the meaning of section 38(2) of the EPF Act as no proper particulars have been given in the certificate,
- (b) Employer has already paid the amount due.
- (c) The Employer is not the defaulter.
- (d) The certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings.

Where there are statutes made *in pari materia*, whatever has been determined in the construction of one of them is a sound rule of construction for the other [*Craies on Statute Law*, 7th Ed., page 139]. When enacting a new law, the legislature is presumed to have had in contemplation the existing statutes on the same subject, and to have framed its enactment with reference thereto. This is the real basis for the rule *in pari materia*; and it is conducive to judicial discipline to interpret identical provisions in two Acts which are *in pari materia*, in a similar manner [Bindra, *Interpretation of Statutes*, 10th Ed., 845].

Therefore, I am of the view that, where proceedings are instituted in terms of section 3D (2) of the Ordinance, the available defenses for an employer summoned are as follows:

- (a) The certificate is not a certificate within the meaning of section 3D (2) of the Ordinance as the particulars of the sum claimed and the identification of the employee have not been given therein.
- (b) Employer has already paid the amount due.
- (c) The Employer is not the defaulter.
- (d) The certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings.

The Petitioners inter alia urged the following grounds before the learned Magistrate:

- (i) During the purported period of service of the Intervenant Respondent there were other Directors
- (ii) The Intervenant Respondent is not protected by the Ordinance
- (iii) During the impugned period the Intervenant Respondent was not working in Sri Lanka
- (iv) There was no contract of employment between Fashion Tex International (Pvt) Ltd. and the Intervenant Respondent
- (v) Fashion Tex International (Pvt) Ltd. does not fall within the Ordinance
- (vi) There as no agreement to pay the salary of the Intervenant Respondent in US dollars

None of the grounds urged by the Petitioners before the learned Magistrate fall within the available defenses for an employer under the Ordinance. The Petitioners should have sought to assail the certificate issued by the Complainant in appropriate proceedings where administrative law principles apply and not in recovery proceedings forming the subject matter of this application if their grievance is that the Complainant exceeded his powers in issuing the relevant certificate.

The learned High Court Judge correctly held that the Petitioners should have established exceptional circumstances to succeed in the revision application made to the High Court. They failed to do so.

For the foregoing reasons, I see no reason to interfere with the judgment of the learned High Court Judge of Colombo dated 09.06.2015.

The appeal is dismissed with costs fixed at Rs. 25,000/=.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal