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

In the matter of an application for mandates in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S. M. Jayasiri Bandara
No. 2214, 3rd Step, Anuradhapura.

**Petitioner**

**Case No. CA (Writ) 149/2014**

**Vs.**

1. Rex Group of Companies
   Rex Building, Anuradhapura.

2. M. D. Muhandiram
   Asst. Commissioner of Labour,
   Asst. Labour Commissioner's Office,
   Anuradhapura.

3. V. B. P. K. Weerasinghe
   Commissioner General of Labour,
   Department of Labour,
   Labour Secretariat, Colombo 05.

4. R. M. B. A. Devendra
   Deputy Commissioner of Labour,
   Deputy Labour Commissioner's Office,
   North Central Province, Anuradhapura.

5. Wataliyadda (Industrial Relations)
   Deputy Commissioner of Labour,
   Department of Labour,
   Labour Secretariat, P. O. Box 575, Colombo 05.

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

**Respondents**

7. M. D. C. Amaratunga
   Commissioner General of Labour,
   Department of Labour,
   Labour Secretariat, Colombo 05.

**Added Respondent**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

Pubudu Alwis for the Petitioner

Charuka Ekanayake SC for 2nd to 7th Respondents

**Written Submissions tendered on:**

Petitioner on 11.10.2018

2nd to 7th Respondents on 03.07.2018

**Argued on:** 15.07.2019

**Decided on:** 29.11.2019

**Janak De Silva J.**

The Petitioner is seeking the following reliefs:

(a) A writ of certiorari quashing the decision of the 5th Respondent contained in document marked P19;

(b) A writ of mandamus compelling the 2nd to 5th Respondents to hold an inquiry and grant EPF and ETF in favour of the Petitioner from the 1st Respondent;

(c) Make order referring this dispute to an arbitrator as suggested by the 4th Respondent in letter marked P16.

The Petitioner was employed by the 1st Respondent from January 1982. His services were terminated on 15.07.2004 against which termination he made an application to the Labour Tribunal. The Labour Tribunal on 20.06.2007 held that the termination was unreasonable and unjust and awarded compensation. However, the 1st Respondent appealed to the Provincial High Court of Anuradhapura which, on 17.06.2009, while holding the termination to be reasonable and justifiable reduced the amount of compensation awarded by the Labour Tribunal.

The Petitioner by P3, P3(1) and P3(3) dated 09.08.2007 made an application seeking his statutory dues of EPF, ETF and gratuity. The Petitioner claims that the 2nd Respondent by letter dated 27.02.2009 (P4) informed the Petitioner that his EPF has been duly paid and it was not possible to proceed with the application for gratuity as the 1st Respondent did not employ more than 15 employees.

The Petitioner contends that this order was made without conducting a proper inquiry and that he preferred an appeal [P5(i) and P5(ii)] to the 3rd Respondent which was referred to the 4th Respondent (P6).

The Petitioner contends that there was a prolonged delay in considering his appeal and that after several reminders the 4th Respondent submitted a report to the 3rd Respondent (P16) where a reference is made to refer the dispute for arbitration. Thereafter the 5th Respondent on behalf of the 3rd Respondent called the chief executive officer of the 1st Respondent for discussion on 08.12.2011 which was copied to the Petitioner (P17).

The 5th Respondent by letter dated 10.10.2012 (P19) informed the Petitioner that his claim for EPF to be calculated by taking his monthly salary as Rs. 6900/= is denied as it transpires that Rs. 1800/= has been paid as travelling expenses. It is further stated that the claim for gratuity is rejected as it is not revealed that the 1st Respondent employed 15 or more persons before the date of termination.

The Petitioner complains that there was no proper inquiry into his complaint. However, P16 shows that the parties were summoned on at least two occasions namely 23.08.2011 and 29.08.2011. P16 also shows that the 4th Respondent considered the documentary evidence available in several official briefs. The Petitioner was clearly given a hearing and the rules of natural justice followed.

As for the EPF, in his application for EPF (P3) the Petitioner claimed that his salary was Rs. 6900/= at the time of termination. However, the Petitioner had in his evidence before the Labour Tribunal stated that his basic salary was Rs. 5100/= and was given a travelling allowance of Rs. 1800/= (P1 page 12). This is a fact that was correctly considered in P16 and P17.

The Petitioner has in his application for gratuity [P3(i)] has given a list of persons employed by the 1st Respondent [P3(2)] containing 17 names. However, documents marked 2R1 to 2R3 which had been submitted to the 2nd Respondent in 2008 shows that three of them were in fact not employees of the 1st Respondent. For example, Asanka Perera has submitted evidence (2R2) that he is carrying on a separate business under the name and style of "A.P.I. Distributors". Piyasena Perera by 2R1 stated that he is conducting a separate business under the name and style of "Royal Management and Investigations". Suminda Perera has stated that he is not an employee of the 1st Respondent (2R3). In the light of this evidence there is no error in the conclusion that the 1st Respondent did not employee 15 or more persons. Furthermore, 1st Respondent has before this Court produced evidence (1R2A to 1R2C) of salary particulars of its employees.

Where its procedure is not regulated by statute, a tribunal it is free to adopt a procedure of its own, so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source provided it is logically probative. The only obligation which the law casts on it is that it should not act on any information which it may receive unless it is put to the party against whom it is to be used and give him a fair opportunity to explain or refute it. [*Chulasubadra De Silva v. The University of Colombo* (1986) 2 Sri.L.R. 288]. There is no allegation that the Petitioner was not given an opportunity to respond to the evidence relied on by the 1st Respondent.

The Petitioner seeks a writ of mandamus compelling the Respondent to hold an inquiry and grant EPF and ETF in favour of the Petitioner from the 1st Respondent. This application is misconceived in law as a proper inquiry has already been held.

The Petitioner further seeks an order referring this dispute to an arbitrator as suggested by the 4th Respondent in letter marked P16. This application is misconceived in law. Firstly, there is no statutory or public duty to refer the matter for arbitration. Secondly, the prayer is erroneous. There is no specific prayer for a writ. In *Dayananda v. Thalwatte* [(2001) 2 Sri.L.R. 73] this Court held that the failure to specify the writ renders the application bad in law.

For all the foregoing reasons, I dismiss the application of the Petitioner but without costs.

Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

Judge of the Court of Appeal