

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 under and
in terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.

CA-WRIT APPLICATION NO:

CA WRIT: 370/22

IIRM Lanka Insurance Brokers (Pvt) Limited,

03rd Floor, No. 131, W.A.D. Ramanayake

Mawatha,

Colombo 02.

Petitioner

1. B.K. Prabath Chandrakeerthi
Commissioner General of Labour
No. 41, Kirula Road
Colombo 05.
2. P.K.D.H. Munasinghe,
Assistant Commissioner of Labour
District Labour Office-Colombo South
6th Floor
Department of Labour
Colombo 05.
3. K.A. Deepika
Labour Officer
District Labour Office-Colombo South
6th Floor
Department of Labour

Colombo 05.

4. G.A. Lionel
Labour Officer
District Labour Office-Colombo South
6th Floor
Department of Labour
Colombo 05.

5. Piyumi K. Kumarasiri,
Labour Officer
District Labour Office-Colombo South
6th Floor
Department of Labour
Colombo 05.

6. Don Saminda P. Colombage
No. 85/6
Neralu Uyana
Pannipitiya
Battaramulla

7. T.R.Jagath Fernando
No. 172/5
Samudra Mawatha
Wadduwa.

Respondents

Before : N. Bandula Karunarathna P/CA, J.
B. Sasi Mahendran, J.

Counsel: Mokshini Jayamanne for the Petitioner.
Thidas Herath for the 6th and 7th Respondents.
Nayomi Kahawita, SC for the Respondents

Argued on: 04.03.2024

Written

Submissions 03.05.2024 (by the Petitioner)

On: 05.06.2024 (by the 6th and 7th Respondents)

Decided On: 14.06.2024

B. Sasi Mahendran, J

This is a Writ Application in relation to an order of the 2nd Respondent relating to the provisions of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No 19 of 1954 (hereinafter referred to as Act).

The 6th and 7th Respondents who were employees of the Petitioner made an application to the 1st Respondent under the said Act on 30th November 2021, requesting the 1st Respondent to order the Petitioner company to pay the deducted salaries of the employees in or around from April/ May 2020 to September 2020. At the inquiry the Petitioner has taken the position that during the said time they had run into a great hardship on account of the pandemic and as a consequence, its business operations have been severely and adversely affected. Therefore, they have reduced their expenses and the 6th and 7th Respondents along with the other employees have agreed to the reduction from their salaries.

On the other hand, 6th and 7th Respondents have stated that, the Petitioner failed to produce any documents with regard to the financial hardship faced by them and also they failed to produce any documents regarding the consent given by the Respondents.

The question before us is whether the 6th and 7th Respondents gave consent for their salary reduction whereas 6th and 7th Respondents claimed that they did not give their consent. The fact concerned is in dispute. The disputed facts that they gave consent or not given could be proved by leading evidence by both oral and documentary, and by cross examining the witnesses, their credibility could be challenged. It could be achieved at the Court of first instance.

In the light of this contention, this Court will now determine whether it is, in fact, the appropriate forum to address this issue.

Wade and Forsyth in their text “Administrative Law” 11th Edition at p. 547 state,

“A feature of prerogative remedy procedure which remains unaltered in the modern procedure is that evidence is taken on affidavit i.e. by sworn statements in writing rather than orally. It is possible, but exceptional, for the court to allow cross-examination on the affidavits. If the case turns upon a conflict of evidence, quashing and prohibiting orders may therefore involve difficulties.”

And further at p. 557,

“Cross-examination was also only rarely allowed under Order 53. **On the whole judicial review is not concerned with factual disputes and is ill-suited to resolve such disputes. In the absence of oral testimony courts rely on affidavit evidence without the benefit of cross-examination, and generally take the facts where they are in issue as they are deposed to by the public authority.** But factual disputes can arise for instance, over the existence of a jurisdictional fact or the truthfulness of a particular witness where justice requires the cross-examination be ordered.” [emphasis added]

This proposition was considered in the following cases,

In the case of Thajudeen Vs. Sri Lanka Tea Board and Another (1981) 2 SLR 471

Ranasinghe J (as he was then) with Seneviratne J agreeing held:

“ That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation, Porraju v. General Manager B. N. Rly⁴” (at page 474). The Court of Appeal further held that,

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-

eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”

This was further expanded in the case of Habarana Lodge Limited Vs. Commissioner General of Labour CA WRIT 236/2015 where Padman Surasena J. observed that;

“Writ jurisdiction of this court is an extraordinary jurisdiction which this court should exercise when it is really necessary. On the other hand, it is not open for this court to appropriate to itself and assume the jurisdiction which has been conferred on the Magistrate by the statute. And in any case one cannot decide this question of fact without holding a proper inquiry.”

In Stassen Exports (Pvt) Ltd, The Commissioner General of Inland Revenue & Others CA (Writ) Application No: 71/2019 held that;

“The above-mentioned matters are serious matters which are connected to the reliefs sought in this Application. Since those matters are involved with the facts, the Court cannot decide on those facts on affidavit evidence. It is trite law that when the material facts are in dispute the Courts does not exercise its Writ jurisdiction”

Vijith K. Malalgoda, PC J. in Francis Kulasooriya Vs. OIC-Police Station-Kirindiwela SC Appeal No. 52/2021 observed that;

“Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute.” Therefore, after considering the above-stated facts of the case and the legal literature, I hold that the Petitioner Company is not entitled to invoke Writ jurisdiction of this Court.

We hold that the question of consent given by the 6th and 7th Respondents cannot be adjudicated by a Writ Court, as it involves disputed question of fact which could only be resolved by Oral testimony of a Witness.

Accordingly, We dismiss this Application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL