

**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.*

Lanka Milk Foods (CWE) PLC,
No.579/1, Welisara,
Ragama.

PETITIONER

C.A. Case No. WRT-0523/23

Vs.

1. B. K. Prabath Chandrakeerthi.
Commissioner General of Labour,
Labour Secretariat,
PO Box. 575,
Colombo 05.
2. H. K. R. Perera.
Assistant Commissioner of Labour,
District Labour Office,
Ja-Ela.
3. Jasenth Liyanage Prasanga de Silva.
No. 272,
Gonawala,
Kelaniya.

RESPONDENTS

BEFORE : WICKUM A. KALUARACHCHI, J

COUNSEL : Shivaan Coorey with Damithu Surasena for the Petitioner.
Nisala Seniya Fernando instructed by Piyumi Kumari for the
3rd Respondent.
Navodi de Zoysa, SC, for the 1st and 2nd Respondents.

SUPPORTED ON : 18.10.2023

DECIDED ON : 28.11.2023

ORDER

WICKUM A. KALUARACHCHI, J.

The petitioner has filed this writ application seeking to quash the decision of the 1st and/or 2nd respondents contained in the notice dated 22.11.2022 (marked P-2) issued in terms of Section 46(3) of the Wages Board Ordinance and to quash the certificate filed in the Magistrate Court of Welisara in the case bearing No. 79165/23 to recover the sum mentioned therein. In addition, the petitioner seeks interim relief of staying the proceedings of the Magistrate's Court of Welisara until this application is determined. The petitioner states in the petition that the decision contained in the said certificate is ultra vires, arbitrary, and illegal, and the decision has been made in contravention of the rules of natural justice. The 3rd respondent has filed limited objections to the application and moved to dismiss the same.

In supporting this application, the learned Counsel for the petitioner made oral submissions. The learned Counsel for the 3rd respondent and the learned State Counsel for the 1st and 2nd respondent made oral submissions and urged to dismiss the application with costs without issuing notices to the respondents. This order has to be given to determine whether the notices should be issued to the respondents and whether the interim reliefs prayed for by the petitioner could be granted.

The learned Counsel for the petitioner advanced his arguments on the following three grounds:

1. The affidavit submitted with the statement of objections is defective and invalid.
2. A decision of the Wages Board has not been annexed to P-2, the petitioner was never heard in respect of the matters

contained in P-2, and the petitioner does not know how the Wages Board arrived at the decision mentioned in P-2.

3. When awarding compensation by the Labour Tribunal, as per the order marked P-13, the amount mentioned in P-2 was included and thus, the Magistrate Court case cannot proceed to recover the same amount again.

In response, the learned Counsel for the 3rd respondent asserted that the defect purported to render the affidavit invalid is just a typographical error, and hence the said minor defect has no bearing on the validity of the affidavit. The learned Counsel for the 3rd respondent contended further that the application of the petitioner was entirely based on the ground that the petitioner company was not heard and no proper inquiry was held but the Wages Board has arrived at the decision by hearing all parties involved. Showing the relevant documents and inquiry proceedings, the learned Counsel contended that a complete and proper inquiry was held.

The learned State Counsel appearing for the 1st and 2nd respondents advanced her arguments on the following three grounds.

1. The petitioner is guilty of laches; therefore, the application should be dismissed.
2. The petitioner's application to quash P-2 is not consistent with his other pleadings.
3. A proper inquiry has been held in determining the amount mentioned in P-2.

Now, I proceed to consider the issues raised by the learned Counsel for all three parties.

Validity of the affidavit

What the learned Counsel for the petitioner pointed out was that in the jurat of the affidavit filed along with the limited objection, it is mentioned as “**she** having understood...” but the affirmant of the

affidavit is a male, namely, Jasenthu Liyanage Prasanga de Silva. He contended that the affidavit has been tendered by a female and not by the 3rd respondent; therefore, the court cannot rely on this affidavit.

In substantiating the above argument, the learned Counsel tendered the case of ***Elangakoon v. Officer in Charge, Police Station, Eppawela and Another*** - (2007) 1 Sri L.R. 398. In this case, the petition and affidavit were not addressed to the Hon. President and the other Lordships of the Court of Appeal. The pleadings contained in the petition of appeal and affidavit were in total disarray and were ambiguous. Considering those matters and the other reasons stated in the judgment, the application pertaining to that case was dismissed. In the case at hand, the only mistake is mentioning “she” instead of “he” in the jurat. Therefore, the aforesaid *Elangakoon* case has no applicability to the instant action.

This is not an error occurred in the averments of the affidavit. Section 9 of the Oaths and Affirmations Ordinance states:

No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

Therefore, I agree with the contention of the learned Counsel for the 3rd respondent that it is a typographical error, and I hold that the said typographical error is not a reason to invalidate the affidavit. Apart from that, whether “he” or “she” is mentioned in the jurat, it is precisely clear that Jasenthu Liyanage Prasanga de Silva, the 3rd respondent and no one else has submitted the affidavit in support of their limited objections. Hence, there is no reason to reject the said affidavit.

Whether the amount of Rs.67,613.33 mentioned in P-2 is included in the amount awarded by the Labour Tribunal

The learned Counsel for the petitioner contended that the Labour Tribunal inquiry was also held on the complaint made by the 3rd respondent against the petitioner company, and the amount mentioned in P-2 has been included in the award of Rs. 1,844,000/- granted to the 3rd respondent.

The complaint made by the 3rd respondent in terms of Section 31(B) of the Industrial Disputes Act has been tendered with the statement of objections marked 3R-1. In the said complaint, what was prayed for by the 3rd respondent was reinstatement, or if not, reasonable compensation. The 3rd respondent has not requested an order from the Labour Tribunal for back wages or the amount due for the balance annual leave. The amount mentioned in the schedule annexed to P-2, is the total amount to be paid for the balance annual leave of 2018 and the salary for the month of January 2019. It is clear that the said two dues have not been prayed for by the 3rd respondent from the Labour Tribunal. According to the Labour Tribunal order marked P-13 also, it is apparent that compensation has been awarded as an alternative remedy for reinstatement. Therefore, it is clear that the Labour Tribunal has awarded only the compensation, and the amounts mentioned in the annexure to P-2 is not included in the said award. Hence, the order of the Labour Tribunal is not an obstacle to maintain the case filed in the Magistrate Court of Welisara.

Whether the petitioner is guilty of laches

The learned State Counsel appearing for the 1st and 2nd respondents contended that the petitioner had taken no step when the notice P-2 was issued, and only after the Magistrate Court case was instituted, the petitioner rushed to this court and requests to quash P-2. Therefore, the learned State Counsel submitted that the petitioner is guilty of

laches, and this application must be dismissed on that ground as well. The learned Counsel for the petitioner did not explain any reason for the delay.

The notice P-2 was issued on 22nd November 2022. The petition of the instant writ application in which it was prayed to quash P-2 was filed on 11th August 2023. Therefore, it is apparent that the petitioner challenged the notice P-2 more than eight months after the P-2 was issued. There is no explanation from the petitioner regarding the eight-month delay. As this is a delay of more than eight months for which an explanation was not given, the petitioner is guilty of laches.

The main issue relating to the application

The petitioner's application is mainly based on the ground that the petitioner has never been heard and no proper inquiry was held. The learned Counsel for the petitioner contended that the notice marked P-2 has been sent by the Assistant Commissioner of Labour, but the amount mentioned in P-2 has been decided by the Wages Board. His contention was that the petitioner does not know who inquired about this matter. The learned Counsel contended further that the petitioner has no knowledge whether an inquiry was held. He submitted that a copy of the Wages Board decision is not annexed with P-2, and up to date, no document has been tendered by the respondent to show that there was an inquiry in making this decision. Therefore, the contention of the learned Counsel was that the decision refers in P-2 is ultra vires, illegal, and P-2 has been issued violating the rules of natural justice.

The learned Counsel for the 3rd respondent submitted that the documents marked 3R-5 to 3R-10 are the documents pertaining to the inquiry, and the petitioner was well aware of that inquiry. Further, the learned Counsel contended that the document 3R-12 is the written submission filed by the petitioner for the inquiry, and the petitioner is totally misrepresenting the facts by stating that the petitioner company

was never been heard. In addition, the learned Counsel for the 3rd respondent stated that the proceedings of the inquiry marked 3R-13 and 3R-14 bear testimony that a proper inquiry was held and the petitioner participated at the said inquiry. The learned Counsel stated further that the petitioner is abusing the process of the Court by filing this application.

The learned State Counsel also stated that there was a proper inquiry, the petitioner participated in the inquiry, and thus the petitioner has no legal basis to maintain this application. Further, the learned State Counsel pointed out that the letter P-15 is the response made by the petitioner to the P-2, and even in the said response, the petitioner has not mentioned that the petitioner had never been heard. The learned State Counsel submitted that challenging P-2 is an afterthought only after the Magistrate Court case was instituted.

In reply to the contentions made by the learned Counsel for the 3rd respondent and the learned State Counsel, the learned Counsel for the petitioner stated that according to the inquiry proceedings shown by the learned Counsel for the 3rd respondent, the inquiry was held with regard to the gratuity as well as wages, but both matters cannot be taken together for an inquiry because two different defences have to be taken with regard to the two matters. The learned Counsel contended further that the petitioner participated in the inquiry held with regard to the gratuity, and surreptitiously, matters regarding the wages have also been decided.

Firstly, it is to be noted that this kind of inquiry is not as same as a trial in a Criminal Court. In a criminal case, one can argue that two different charges cannot be brought in the same indictment because the accused has to take two different defences. This is an inquiry with regard to the payment of gratuity and wages. No prejudice would be caused to the petitioner company by inquiring these two matters in the same inquiry.

However, this is not the issue in this case. When the learned Counsel for the petitioner presented his case, he asserted that the petitioner does not know who inquired about the matters relating to this application and the petitioner does not know whether an inquiry was even held. The inquiry proceedings dated 11.09.2019, 21.11.2019, 18.12.2019 and 08.01.2020 marked as 3R-13 clearly demonstrate that on those days, the petitioner company participated in the inquiry. In addition, the document 3R-14 demonstrates that on 28.08.2019 also, the legal officer of the petitioner company represented the petitioner company at the inquiry. On that day, the representative of the petitioner company has been instructed to state facts in writing with regard to the incentives pertaining to the 3rd respondent. In the proceedings dated 11.09.2019, it has been stated as follows:

2 වන ඉල්ලීම :- පැමිණිලිකරු ඉපයූ වැටුප ගෙවිය යුතු බවට උපදෙස් ලබා දෙන ලදී.

In the proceedings dated 21.11.2019 it is stated as follows:

ඊළඟ දිනයේදී

- I. 2018 නොවැ. දෙසැ; 2019 ජනවාරි දිවි දීමනාව
- II. 2019 ජනවාරි මස වැටුප
- III. පාරිතෝෂික මුදල
- IV. උපයාගත් නිවාඩු
- V. සේවා සහතික සහ “B” ඉදිරිපත් කිරීමට උපදෙස් දුනිමි.

Therefore, it is very clear that both parties have been informed to furnish details not only regarding the gratuity but also regarding the wages and earned leave of the 3rd respondent. In these circumstances, I regret to state that I am unable to understand why the learned counsel for the petitioner stated that the petitioner is unaware whether an inquiry was held with regard to the payment of wages and that, surreptitiously, the amount mentioned in P-2 has been decided.

According to the proceedings dated 08.01.2020, the petitioner participated in the inquiry. In the proceedings, it is stated that the details regarding the calculation of the 2019 January salary have not

been tendered. However, the representative of the petitioner company, Mrs. H. Bulathwatte, Attorney-at-Law, has informed at the inquiry that the 3rd respondent's 2019 January salary is Rs.46,100/-. According to the schedule attached to the P-2, the said amount has been ordered to be paid. According to the proceedings of the same date, the 3rd respondent's leave that were not taken has also been considered in the presence of the aforesaid representative of the petitioner company. The other amount mentioned in the schedule to the P-2 is the dues for the 3rd respondent for the balance annual leave in 2018. Therefore, it is precisely clear that the petitioner company participated in the inquiry held not only with regard to the gratuity but also with regard to the payment of wages mentioned in notice P-2. Hence, it is apparent that the petitioner was well aware of the inquiry and participated in the inquiry. So, it is evident that the petitioner company was heard before issuing the certificate P-2.

In addition, the written submission tendered by the petitioner company to the Assistant Commissioner of Labour has been tendered by the 3rd respondent marked 3R-12. In paragraph two of the said submission, the petitioner states as follows:

...එහිදී පැමිණිලිකාර පාර්ශවය විසින් ඉල්ලා ඇති සහන වන පාරිතෝෂික දීමනාව, ඉපයූ නිවාඩු, 2018 දෙසැම්බර් සහ 2019 ජනවාරි කොමිස් මුදල් සහ 2019 ජනවාරි වැටුප ඉල්ලුම්කරු හට ලබා දීමට සේවායෝජක විරුද්ධ වීමට හේතු දක්වා ලිඛිත දේශනයක් ඉදිරිපත් කිරීමට උපදෙස් ලබා දෙන ලදී.

Accordingly, it is apparent that the petitioner was well aware about the matters mentioned in P-2 and has submitted a written submission dealing with the matters mentioned in P-2, such as earned leave, 2018 December, and 2019 January wages. Hence, the argument of the learned Counsel for the petitioner that the petitioner participated at the inquiry pertaining to gratuity and the matters mentioned in P-2 has never been inquired cannot be accepted and it is an argument based on wrong facts. On the aforesaid circumstances it is precisely clear that

the petitioner was well aware of the issues that resulted in issuing P-2 because those issues were addressed in the inquiry in which the petitioner participated. Not only he participated at the inquiry but also the petitioner was given the opportunity to tender written submissions on those matters, and the petitioner has submitted written submissions to the 2nd respondent. After holding a full inquiry only, the 2nd respondent issued notice P-2. Even after tendering a written submission containing 33 paragraphs on those matters, the petitioner says that the petitioner company was never heard and no proper inquiry was held. I must say that there was no other way to hold a proper and fair inquiry. The petitioner was informed to participate in the inquiry; accordingly, he participated in the inquiry; the petitioner has been given all the opportunities to tender relevant documents; the petitioner was heard; and the petitioner was given an opportunity to tender written submissions as well. After taking part in the inquiry and submitting written submissions, it is strange to hear that the petitioner was never heard and no proper inquiry was held in issuing P-2.

For the foregoing reasons, I hold that before issuing P-2, a proper and fair inquiry has been held after giving the opportunity for the petitioner to present his case without any restriction. There was no violation of the rules of natural justice at all. Therefore, the petitioner has no legal basis to maintain this application. In addition, the petitioner is guilty of laches.

Accordingly, I refuse to issue notices to the respondents. The writ application of the petitioner is dismissed, with costs fixed at Rs.75,000/-.

Application dismissed.

JUDGE OF THE COURT OF APPEAL