

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

In the matter of an application in terms of
Article 140 of the Constitution of Sri Lanka
for a mandate in the nature of writs of
Certiorari

Swadeshi Marketing (Pvt) Limited,

No. 57 Colombo Road,

Kandana.

Petitioner

Case No: CA (Writ) 23/2016

Vs.

1. The Commissioner of Labour,
Labour Secretariat,
Narahenpita, Colombo 5.
2. B.A. Mahinda,
Assistant Commissioner of Labour,
District Labour Office,
Ja-Ela.
3. Neranjan Saman Keerthiratne,
75/25, 9th Lane,
Araliya Uyana, Depanama,
Pannipitiya.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Manoli Jindasa with Shehara Karunarathna for the Petitioner

Anusha Fernando SD SG for the 1st and 2nd Respondents

Pasan Weerasinghe for the 3rd Respondent

Argued On: 12.06.2019

Written Submissions Filed On:

Petitioner on 02.08.2019 and 10.09.2019

1st and 2nd Respondents on 02.08.2019

3rd Respondent on 02.08.2019 and 16.09.2019

Decided On: 26.05.2020

Janak De Silva J.

The Petitioner is seeking writs of certiorari quashing the orders in the letters dated 22.12.2015 (P15), 23.10.2014 (P8(a)), 30.10.2014 (P8) and 16.12.2014 (P13). They pertain to efforts made to recover statutory dues under the Employees Provident Fund Act No. 15 of 1958 as amended (EPF Act) and the Payment of Gratuity Act No. 12 of 1983 as amended (Gratuity Act) payable by the Petitioner to the 3rd Respondent who was a former employee of the Petitioner.

The Petitioner disputes that the sum of Rs. 1,011,000/= stated therein is due and contends that this calculation has been made by including what the Petitioner contends to be "reimbursable allowance" paid to the 3rd Respondent which does not fall within the meaning of the term "earnings" in section 47 of the EPF Act and the term "wage or salary" in section 20 of the Gratuity Act.

According to section 47 of the EPF Act "earnings" means:

- (a) wages, salary or fees;
- (b) cost of living allowance, special living allowance and other similar allowances;
- (c) payment in respect of holidays;
- (d) cash value of any cooked or uncooked food provided by the employer;
- (e) meal allowances;
- (f) such other form of remuneration as may be prescribed;

According to Section 20 of the Gratuity Act "wage or salary" means:

- (a) the basic or consolidated wage or salary;
- (b) cost of living allowance, special living allowance or other similar allowance; and
- (c) piece rates.

The learned counsel for the Petitioner contends that the *eiusdem generis* rule is engaged in the instant matter and that the "reimbursable allowance" paid to the 3rd Respondent does not fall within the phrase "cost of living allowance, special living allowance and other similar allowances" in the above statutory provisions.

In *Sohli Eduljee Captain v. Commissioner of Inland Revenue* (77 N.L.R. 350 at 353) Wijayatilake J. explained the scope of the *ejusdem generis* rule of construction in the interpretation of statutes by summing up *Maxwell on the Interpretation of Statutes*, 12th Ed., pp. 297 to 305 as follows:

"In the abstract, general words, like all others, receive their full and natural meaning, and the Courts will not impose on them limitations not called for by the sense or objects of the Enactment. But the general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words. For according to a well established rule, in the

construction of Statutes, general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the Legislature. In other words, the general expression is to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended as where there is a provision specifically excepting certain classes clearly not within the suggested genus...The rule applies only to general words following words which are less general. Unless there is a genus or class or category, there is no room for any application of the ejusdem generis doctrine...The rule of ejusdem generis may apply despite the absence of the word 'other' at the end of the list of things specified."

It is notable that the first two words refer to two types of living allowances namely cost of living allowance and special living allowance. The genus is "living allowance" and accordingly the words "other similar allowances" must be interpreted to cover only different varieties of living allowances. This is confirmed by the use of the words "other similar" and the fact that the definition uses the word "means" which is indicative of a definition that is restrictive in nature and exhaustive. Therefore, for any allowance to fall within the phrase "other similar allowances" it must be a type of a living allowance.

The 3rd Respondent did not claim that it was a type of a living allowance. The position of the Petitioner is that the "allowance" paid to the 3rd Respondent was a reimbursable allowance intended to cover the expenses incurred in entertaining customers and other expenses incurred as part of his travel island wide to promote the products of the Petitioner.

The 3rd Respondent, in affidavit dated 2nd April 2014 (2R5) submitted to the Department of Labour, has claimed that at the time of termination of services, his salary was Rs. 2,00,000/= of which Rs. 125000/= and Rs. 75,000/= were paid at two different times. He further states that he was paid a special allowance of Rs. 9000/= from September 2006 which was increased to 15,000/= in October 2008. A further increase to Rs. 35,000/= was made April 2009 which was again increased to Rs. 40,000/= in June 2009. In September 2009 it was increased to Rs.

60,000/= and was again increased to Rs. 75,000/= in September 2011 and remained so until his termination in March 2013.

The Commissioner of Labour had first appointed an inquiring officer who after due inquiry concluded that the "reimbursable allowance" was in fact part of the wages or salary of the 3rd Respondent (2R6). Thereafter, this decision was informed to the Petitioner who submitted an appeal. The Commissioner of Labour then appointed another inquiring officer to look into the matter. After inquiry that inquiring officer concluded that the "reimbursable allowance" can be considered as "other allowance" within the meaning of the EPF Act (2R10).

As pointed out above, the term "wages" and "other similar allowance" have different meanings in the EPF Act. Therefore, the two inquiring officers appointed by the 1st Respondent came to two different conclusions although one may argue that it does not matter since both situations fall within the term "earnings" in the EPF Act. Yet, the second inquiring officer concludes that it falls within "other allowance" without any consideration of whether it is a type of a living allowance.

Confronted with these two inconsistent conclusions the 1st Respondent yet decided the "reimbursable allowance" to be within the meaning of "earnings" in the EPF Act. That in my opinion is arbitrary and ultra vires the powers of the 1st Respondent.

For all the foregoing reasons, I issue writs of certiorari quashing the decisions contained in letters dated 22.12.2015 (P15), 23.10.2014 (P8 (a)), 30.10.2014 (P8) and 16.12.2014 (P13).

The parties shall bear their costs.

Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

Judge of the Court of Appeal