

**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, mandamus and prohibition in  
terms of Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka*

**CA (Writ) Application No.  
724/2023**

Kaluthara Vithanage Gimhani  
Udeshika Senarathne,  
No.156/6, Kurunduwatta, Meegoda

**PETITIONER**

1. B.K. Prabath Chandrakeerthi  
Commissioner General of Labour  
Department of Labour,  
Colombo 05.

2. D.M.D.M.K Dissanayaka  
Additional Labour Commissioner  
District Labour Office,  
Kandy (South).

3. I. K. G. Ipitawela No. 317/3,  
Maligathanna,  
Ampitiya

4. Hon. Magistrate (Court No. 2)  
Magistrate's Court,  
Kandy.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Kuvera De Zoysa, P.C with Samuditha Kumarasinghe,  
instructed by Sanjay Fonseka for the Petitioner.

Yuresha Fernando DSG with Dr. R. Gunaratne SC for the 1<sup>st</sup>  
and 2<sup>nd</sup> Respondents

Hasanthi Welikale for the 3<sup>rd</sup> Respondent.

Supported on : 06.02.2024

Written Submissions on : 09.04.2024 (by Petitioner)  
25.04.2024 (by 1<sup>st</sup> and 2<sup>nd</sup> Respondents)

Decided on : 30.05.2024

**MOHAMMED LAFFAR, J.**

The Petitioner supported this Application in support for issuance of formal notices and interim relief as prayed for in prayers (g) and (h) of the Petition. This Court heard the Leard President's Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as well. Thereafter, the parties were permitted to file written submissions in this regard.

This matter concerns the payment of gratuity to the 3<sup>rd</sup> Respondent by the Petitioner who was charged for fraud/malpractices regarding misappropriation of funds and thereafter, found to be guilty by the Petitioner.

The 3<sup>rd</sup> Respondent was employed by the Petitioner Bank as a Credit Officer (Grade II) by a letter of appointment dated 15.03.1999. On or about 01.03.2005, the 3<sup>rd</sup> Respondent was promoted to the position of Chief Manager of the Matale Branch of the Petitioner Bank. Subsequently, on or about 20.09.2016, the 3<sup>rd</sup> Respondent was transferred to the Credit Division at the Head Office of the Petitioner Bank. Upon reaching the age of 55 years, the 3<sup>rd</sup> Respondent's services were extended on three separate occasions until

the Board of Directors of the Petitioner Bank denied a fourth extension, resulting in the termination of the 3<sup>rd</sup> Respondent's service on 21.11.2020.

During the period from 01.09.2016 to 31.03.2017, while employed as the Chief Manager of the Credit Division at the Head Office of the Petitioner Bank, the 3<sup>rd</sup> Respondent had facilitated the release of forty-nine (49) loan facilities in total amounting to Rs. 71,090,000/- (Rs. Seventy-One Million Ninety Thousand) to individuals purportedly employed by three private companies, namely Masters Packaging (Pvt) Ltd, A & D Data Solutions (Pvt) Ltd, and Auto Tech (Pvt) Ltd, which were later discovered to be fraudulent and non-existent.

Subsequently, the Internal Audit Division of the Petitioner Bank conducted a preliminary investigation and submitted two interim reports dated 21.08.2017 and 28.08.2017, marked as "P6" and "P10" respectively. These reports revealed that the applicants of the aforementioned loan facilities had submitted forged and/or fraudulent documentation and identified fifteen (15) officers of the Petitioner Bank, including the 3<sup>rd</sup> Respondent, as responsible for the fraud.

It is submitted that the 3<sup>rd</sup> Respondent was subsequently issued a Charge Sheet dated 20.11.2017, including thirteen (13) charges marked as "P13" and a second Charge Sheet dated 14.08.2018, including twelve (12) charges marked as "P14". Accordingly:

- a. The 1<sup>st</sup> Disciplinary Inquiry relating to the 1<sup>st</sup> Charge Sheet marked as "P13" against the 3<sup>rd</sup> Respondent commenced on or about 29.08.2018 and concluded on or about 05.12.2019.
- b. The 2<sup>nd</sup> Disciplinary Inquiry relating to the 2<sup>nd</sup> Charge Sheet marked as "P14" against the 3<sup>rd</sup> Respondent commenced on or about 27.05.2019 and is presently ongoing.

It is observed that while these matters were pending, the 3<sup>rd</sup> Respondent submitted an application for an extension of service from 22.11.2020 to

21.11.2021 by an application dated 03.07.2020 marked as "P18" to the General Manager of the Petitioner Bank. The Board of Directors of the Petitioner Bank, considering the two pending disciplinary inquiries against the 3<sup>rd</sup> Respondent and the gravity of the said inquiries, declined the application for an extension of service. As per the decision of the Board of Directors on 20.11.2020, the service period of the 3<sup>rd</sup> Respondent ended on 21.11.2020. This decision was recorded in the minutes of the Board of Directors of the Petitioner Bank dated 21.08.2020 and 20.11.2020, marked as "P19". The 3<sup>rd</sup> Respondent was informed by letter dated 23.11.2020, marked as "P20" that the application for an extension of service had been denied, thus terminating the 3<sup>rd</sup> Respondent's service on 21.11.2020.

The Board of Directors of the Petitioner Bank, at a meeting held on 22.12.2020, had then resolved to deposit the gratuity payment of the 3<sup>rd</sup> Respondent into the savings account of the 3<sup>rd</sup> Respondent and to freeze the said gratuity deposit until the final decision by the Disciplinary Authority of the Petitioner Bank regarding the aforementioned Disciplinary Inquiries against the 3<sup>rd</sup> Respondent.

Dissatisfied with these steps, the 3<sup>rd</sup> Respondent filed a complaint against the Petitioner Bank at the 2<sup>nd</sup> Respondent District Labour Office, Kandy South on or about 31.12.2020.

In this backdrop, the Final Inquiry Report dated 14.12.2020 of the first Disciplinary Inquiry concerning the First Charge Sheet, marked as "P13" had been received by the General Manager of the Petitioner Bank on 29.01.2021. The Acting General Manager of the Petitioner Bank, via letter dated 02.12.2021 marked as "P27" informed the 2<sup>nd</sup> Respondent that according to the inquiry report of the formal inquiry, the third Respondent was found guilty of six charges. Furthermore, the 3<sup>rd</sup> Respondent had been issued a second charge sheet containing 12 charges on 14.08.2018, and the second disciplinary inquiry had still been ongoing as of this date.

Notwithstanding the two pending disciplinary inquiries against the 3<sup>rd</sup> Respondent, the 2<sup>nd</sup> Respondent issued an order in favour of the 3<sup>rd</sup> Respondent as evident in "P28" for payment of gratuity.

Thereafter, the Disciplinary Authority of the Petitioner Bank issued a Disciplinary Order dated 19.10.2022 marked as "P29" finding the 3<sup>rd</sup> Respondent guilty of all 13 charges wherein:

- a. It was held that the services of the third Respondent stand terminated with effect from 21.11.2020.
- b. Further, it was held that a financial loss of Rs. 6,757,818/- had been caused to the Petitioner by the third Respondent, and therefore, the third Respondent's gratuity amounting to Rs. 2,677,434.80/- would be set off against the said amount, with the remaining balance of Rs. 4,080,383.20/- to be payable in three monthly installments within thirty days of receipt of the disciplinary order.

Being aggrieved by the impugned order and certificate of the 2<sup>nd</sup> Respondent marked as "P28(i)" and "P28(ii)," the Petitioner Bank appealed had then to the 1<sup>st</sup> Respondent, namely the Commissioner General of Labour, by appeal dated 17.01.2023, *inter alia* stating that the Petitioner Bank has proceeded to exercise its rights under and in terms of Section 13 of the Payment of Gratuity Act and forfeited the gratuity payment of the third Respondent.

However, the 1<sup>st</sup> Respondent, by Order dated 28.04.2023 marked as "P32", dismissed the appeal of the Petitioner Bank, citing *inter alia* that the forfeiture of gratuity under Section 13 of Act No. 12 of 1983 does not arise.

The Petitioner pleads that the impugned order dated 28.04.2023 of the 1<sup>st</sup> Respondent marked as "P32" was made assuming a jurisdiction which the first Respondent does not possess, in contravention of Section 31B(1)(c) of the Industrial Disputes Act No. 43 of 1950 (as amended) and therefore, the order is *ultra vires*. They assert that the matter should have been decided by a

competent Labour Tribunal in terms of Section 31B(1)(c) of the Industrial Disputes Act No. 43 of 1950 (as amended) which provides as follows:

*“A workman or a trade union on behalf of a workman who is a member of that union **may make an application in writing to a labour tribunal** for relief or redress in respect of any of the following matters: ..*

*The question **whether the forfeiture of a gratuity in terms of the Payment of Gratuity Act, 1983 has been correctly made in terms of that Act..**”*

This Court further observes the following pertinent provisions of law with regard to these disputes:

It is duly noted that the payment of gratuity to an employee may be forfeited under and in terms of Section 13 of the Payment of Gratuity Act No. 12 of 1983, which reads thus:

*“Any workman, to whom a gratuity is payable under Part II of this Act and, whose services have been terminated **for reasons of fraud, misappropriation of funds of the employer, willful damage to property of the employer, or causing the loss of goods, articles or property of the employer, shall forfeit such gratuity to the extent of the damage or loss caused by him.**”*

Further, the Petitioner Bank had been formed by the State Mortgage & Investment Bank Law No. 13 of 1975, amalgamating the Ceylon State Mortgage Bank and the Agricultural and Industrial Credit Corporation. The 3<sup>rd</sup> Respondent is an employee of the Petitioner Bank as evidenced by document marked as "P20". This Court observes that Section 74 of the said State Mortgage & Investment Bank Law No.13 of 1975 provides as follows:

*“Section 74(1): **The Board may make rules** for or in respect of all or any of the following matters;*

- (a) all matters stated or required by this Law to be prescribed or for which rules are authorized to be made by this Law;
- (b) the issue, registration, transfer, redemption and cancellation of debentures and all matters incidental to, or consequential upon, such issue, registration, transfer redemption or cancellation;
- (c) the forms to be used for any of the purposes of this Law.”

In terms of Section 74(1) of the State Mortgage & Investment Bank Law No.13 of 1975, the Board of Directors of the Petitioner Bank had issued the Disciplinary Rules of the State Mortgage & Investment Bank marked as "P1" to regulate the disciplinary control and the conduct of all employees of the Petitioner Bank. As an employee, the 3<sup>rd</sup> Respondent is bound by the said rules. Rule 23.3 of the rules provides as follows:

“23.3 සේවකයකු ඔහුට එරෙහිව විනය ක්‍රියාමාර්ගයක් අපේක්ෂිතව හෝ ක්‍රියාත්මකව පවතිද්දී විශ්‍රාම ගැන්වීමේ වයසට එළැබෙන්නේ නම් ඔහුගේ විශ්‍රාම ගැන්වීම එම විනයානුකූල ක්‍රියාවට යටත්ව සිදු කරයි. අනතුරුව සිදු කෙරෙන විනය නියෝගය අවශ්‍ය පරිදි ඔහුගේ නියමිත ගෙවීම් හෝ පාරිකෝෂිකයේ කපා හැරීමක ස්වරූපයේ විය හැක.”

Accordingly, it provides that if employees attain the age of retirement while disciplinary proceedings are either contemplated or ongoing against them, their retirement shall be subject to the outcome of such disciplinary actions. Any subsequent disciplinary order issued may result in a reduction or forfeiture of payments or gratuity, as deemed necessary.

In light of the aforementioned circumstances, the order of the first Respondent is *ex facie* erroneous, necessitating the determination of essential questions of law.

The Petitioner has established sufficient grounds for the issue of notice of the Application on the Respondents. Furthermore, this Court is also satisfied to issue the interim orders as prayed. Accordingly, I grant an interim order staying the proceedings of the case bearing No. 44428/2023 in the Magistrate Court of Kandy, pending the hearing and final determination of this instant

Application as prayed for in prayer (g). I also grant an interim order until the final determination of this instant Application, as prayed for in prayer (h) restraining the 1<sup>st</sup> Respondent and/or the 2<sup>nd</sup> Respondent and/or the 3<sup>rd</sup> Respondent and/or any one or more of them and/or their servants and/or agents and/or their successors in office, from taking any steps to enforce the impugned order and/or certificate of the 2<sup>nd</sup> Respondent dated 03.10.2022 marked as "P28(i)" and "P28(ii)" and/or the impugned order of the 1<sup>st</sup> Respondent dated 28.04.2023 marked as "P32".

*Notices are issued and Interim Orders (g), (h) granted.*

**JUDGE OF THE COURT OF APPEAL**