

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

In the matter of an application under Article  
140 of the Constitution for a mandate in the  
nature of a Writ of Certiorari.

Hatton National Bank PLC  
No. 479, T. B. Jaya Mawatha, Colombo 10.

**Petitioner**

Case No. CA (Writ) 457/2011 Vs.

1. Commissioner General of Labour  
Department of Labour,  
Labour Secretariat, P. O. Box 575,  
Colombo 05.

2. W. R. Kularatna Bandara  
Deputy Commissioner of Labour,  
Sabaragamuwa Labour Secretariat,  
No. 108, Moragahayata, Ratnapura.

3. S. G. Suriyaarachchi  
Asst. Commissioner of Labour,  
Labour Secretariat, Kegalle.

4. M. C. L. Cooray  
No. 17, Palliyadora Road, Dehiwala.

5. W. A. N. Chandrasiri  
No. 108 A, Kisirigama, Kirindiwela.

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

**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

S.A. Parthalingam P.C. with Shammil Perera P.C., Sandun Nagahawatte and Sanasi  
Dissanayake for the Petitioner

Sobhitha Rajakaruna SDSG for 1<sup>st</sup> to 3<sup>rd</sup> and 6<sup>th</sup> Respondents

Harith De Mel with Piyumi Kumari for 4<sup>th</sup> Respondent

**Argued on:** 07.05.2019

**Written Submissions tendered on:**

Petitioner on 21.06.2019

4<sup>th</sup> Respondents on 25.06.2019

**Decided on:** 31.01.2020

**Janak De Silva J.**

The Petitioner is seeking a writ of certiorari to quash the directive/order of the 1<sup>st</sup> Respondent dated 20.10.2010 (P18). It is a final notice before legal action is taken to recover a sum of Rs. 9680869.79 from the Petitioner as Employees Provident Fund (EPF) dues.

The Petitioner denies that any such sum is due and claims that it did not employ the persons whose EPF dues are sought to be recovered by P18.

Parties have tendered extensive written submissions on the question of whether the Petitioner was the employer of the persons whose EPF amounts are due. However, this matter can be disposed on two fundamental matters namely whether the application is futile and whether all necessary parties have been made Respondents to this application.

Firstly, the learned counsel for the 4<sup>th</sup> Respondent submitted that the application is futile in that P18 is only a final notice before legal action is instituted to recover the outstanding EPF dues whereas the real decision is P15 against which the Petitioner has not sought any relief.

I have no hesitation in upholding this position. It is by P15 dated 16.06.2010 that the Petitioner was informed of the decision that a sum of Rs. 9680869.79 is outstanding as EPF dues for 94 persons whose names and details are set out in a list annexed to P15 of which the 4<sup>th</sup> and 5<sup>th</sup> Respondents are all but two persons.

Therefore, a writ of certiorari will not be issued to quash P18 as firstly, it is not a decision which determined whether the EPF dues are payable by the Petitioner and secondly even if a writ of certiorari is issued as prayed for in the petition, it is a futile exercise since P15 will continue to exist.

It is an established principle that administrative law remedies will be refused if it is futile [*Peiris v. Gunasekera* (66 NLR 498); *Shamsudeen v. The Minister of Defence and External Affairs* (63 NLR 430)]. In *Air Vice Marshall Elmo Perera vs. Liyanage and others* [(2003) 1 Sri.L.R. 331] it was held that writ would not lie if the final relief sought is a futile remedy. Similarly, in *Flying Officer Rathnayake vs. Commander of the Air Force and Others* [(2008) 2 Sri.L.R. 162] this Court refused to issue a writ of mandamus directing the holding of a court martial as H.E. the President had already approved the withdrawal of the commission. Accordingly, the relief claimed by the Petitioner in the form of a writ of certiorari to quash P18 is futile.

In this context it is noted that the Petitioner has not sought to quash the decision marked P15. In *Weerasooriya v. The Chairman, National Housing Development Authority and Others* [C.A. Application No. 866/98, C.A.M. 08.03.2004] Sripavan J. (as he was then) held that the court will not set aside a document unless it is specifically pleaded and identified in express language in the prayer to the petition.

The learned counsel for the 4<sup>th</sup> Respondent further submitted that in any event a writ of certiorari will not lie as the Petitioner has failed to make all necessary parties Respondents to this application.

The rule is that all those who would be affected by the outcome of the writ application should be made respondents to the application [Amaratunga J. in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267].

While this is the general rule a particular application of this rule in relation to school admission is found in *Gregory Fernando and Others v. Stanley Perera, Acting Principal, Christ The King National School and Others* [(2004) 1 Sri.L.R. 346] where this Court dismissed *in limine* an application which sought a writ of certiorari to quash the temporary list of successful candidates without making the successful children parties to the application.

The application of the Petitioner for a mandate in the nature of writ of certiorari to quash P18 must be dismissed *in limine* for the failure to add as Respondents all the beneficiaries of the order marked P15.

The learned counsel for the 4<sup>th</sup> Respondent finally submitted that heavy costs should be ordered against the Petitioner.

Notice in this application was issued on 13.07.2011 on which day this Court held:

“On perusal of the documents marked P18, Court observes that the Petitioner was informed by an initial notice marked P15 dated 16.06.2010 to pay the respective dues and after the Petitioner was given a hearing the Commissioner of Labour has informed the Petitioner to pay the sum stated in the said document marked P18 dated 20.10.2010. The Petitioner has not challenged the said order in any forum and the Petitioner has filed this application only after the Commissioner of Labour has instituted action in the Magistrate’s Court of Warakapola under case No. 63254.”

The futility of this application was apparent even at the time of its institution and it has resulted in delaying action being proceeded with to recover the EPF dues. Hence, I am of the view that an order for high costs is appropriate in the circumstances of the case.

For all the foregoing reasons, this application is dismissed with costs fixed at Rs. 1,00,000/=.

Website Copy

  
Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

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Judge of the Court of Appeal