

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

In the matter of an application for a mandate in the nature of a Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Seylan Bank PLC
No. 90, Galle Road, Colombo 03.

Petitioner

Case No. C. A. (Writ) Application 452/2013

Vs.

1. Hon. Gamini Lokuge
Minister of Labour,
Labour Secretariat,
No. 575, Colombo 05.
2. V. B. P. K. Weerasinghe
Commissioner General of Labour,
Labour Secretariat,
No. 575, Colombo 05.
3. L. T. G. D. Dharshana
Asst. Commissioner of Labour (Colombo East),
Labour Secretariat,
No. 575, Colombo 05.
4. S. H. I. De Silva
No. 756/5, Madinnagoda, Rajagiriya.

Respondents

5. Hon. S. B. Navinna
Minister of Labour,
Labour Secretariat,
No. 575, Colombo 05.

6. Herath Yapa
Commissioner General of Labour,
Labour Secretariat,
No. 575, Colombo 05.
7. Hon. W. D. J. Seneviratne
Minister of Labour,
Labour Secretariat,
No. 575, Colombo 05.
8. Mrs. Chandrani Amaratunga
Commissioner General of Labour,
Labour Secretariat,
No. 575, Colombo 05.
9. Hon. Ravindra Samaraweera
Minister of Labour,
Labour Secretariat,
No. 575, Colombo 05.
10. R. P. A. Wimalaweera
Commissioner General of Labour,
Labour Secretariat,
No. 575, Colombo 05.

Added Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Ronald Perera P.C. with Anslem Kaluarachchi for the Petitioner

Nayomi Kahawita SSC for the 3rd, 7th and 8th Respondents

Argued On: 09.05.2019

Written Submissions Filed On:

Petitioner on 12.12.2018

Respondents on 08.02.2019

Decided On: 20.05.2020

Janak De Silva J.

The 4th Respondent was employed at the Petitioner Bank from 21.04.1992 to 30.11.2008. The subject matter of this application is the surcharge due on the delayed payment of gratuity to the 4th Respondent by the Petitioner.

The total due as gratuity is the sum of Rs. 39,47,200/=. A sum of Rs. 1,973,600/= was paid to the 4th Respondent on 15.05.2009, which is 50% of the total due, and the balance of Rs. 1,973,600/= was paid on 17.11.2009. The gratuity should have been paid on 30.12.2008.

The 4th Respondent made two complaints to the Commissioner-General of Labour, P4 and P9, claiming a surcharge for the delayed payment.

The first complaint P4 is dated 17.05.2010. The proceedings of the inquiry into this complaint are marked 1R1 to 1R3. A sum of Rs. 1,973,600/= was paid to the 4th Respondent on 15.05.2008 as the 1st installment of the gratuity which is within the 6 months after the due date. Section 5(4)(c) of the Payment of Gratuity Act No. 12 of 1983 (Act) as amended specifies that the surcharge should be 20% of the sum due when the delay is between one to six months as in this case. Therefore, the surcharge due on the 1st installment of Rs. 1,973,600/= is Rs. 3,94,720/= as correctly calculated.

The 2nd complaint P9 is dated 17.11.2011. The proceedings of the inquiry into this complaint are marked 1R4 to 1R6. By P10 the Petitioner was directed to pay a sum of Rs. 493,000/= as surcharge for the delay in paying this second installment. This amount has been computed according to section 5(4)(d) of the Act which specifies a surcharge of 25% of the sum due when

the delay is between six months to twelve months as in this case. Hence, the surcharge imposed by P10 is lawful and in accordance with the Act.

The Petitioner is seeking a writ of certiorari quashing P10. It is claimed that the Petitioner is not subject to section 10 of the Act. However, other than the mere *ipse dixit*, the Petitioner has not explained in the written submissions why the Petitioner is not caught up within section. A careful examination of section 10 of the Act establishes that it applies to every employer.

It was further submitted that the 3rd Respondent failed to appreciate that the Petitioner had made payment of terminal benefits to the 4th Respondent in excess of the amount legally due. However, the Petitioner has failed to establish this position. In any event, it is irrelevant as the issue is whether the gratuity was paid by the due date. Parties cannot by agreement exclude the application of the provisions of the Act. Undoubtedly there has been a delay in the payment of gratuity and the surcharge due has been properly calculated.

For all the foregoing reasons, the application is dismissed. The Petitioner shall pay the 4th Respondent a sum of Rs. 50,000/= as costs of this application.

Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

Judge of the Court of Appeal