

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

Certis Lanka Security Solutions  
(Pvt) Ltd.,  
No.15, De Fonseka Place,  
Colombo 4.  
Petitioner

**CASE NO: CA/WRIT/65/2018**

Vs.

1. V.B.P.K. Weerasinghe,  
Commissioner General of Labour,  
Department of Labour,  
Narahenpita,  
Colombo 5.
2. L.T.G.D. Dharshana,  
Assistant Commissioner of  
Labour (Colombo East),  
5<sup>th</sup> Floor, Department of Labour,  
Colombo 5.
3. Nihal Peiris,  
No.248/209, Lotus Grove,  
Hill Street,  
Dehiwala.  
Respondents

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Nalin Ladduwahetty, P.C., with Indra  
Ladduwahetty for the Petitioner.  
Suranga Wimalasena, S.S.C., for the 1<sup>st</sup> and  
2<sup>nd</sup> Respondents.  
Nihal Fernando, P.C., with Rohan Dunuwille  
for the 3<sup>rd</sup> Respondent.

Argued on: 07.07.2020

Decided on: 06.08.2020

Mahinda Samayawardhena, J.

This application is connected to CA/WRIT/191/2013, in which the Judgment was delivered today.

As the background facts are the same, I will not repeat them here except for clarity.

The 3<sup>rd</sup> Respondent by P2 complained to the 1<sup>st</sup> Respondent Commissioner General of Labour on two matters: (a) non-payment of salary from March 2009 to August 2009, and (b) non-payment of gratuity from 1988 to 2009 by the Petitioner employer.

Non-payment of salary was the subject matter of CA/WRIT/191/2013.

The instant matter relates to non-payment of gratuity.

The events pertaining to the inquiry into non-payment of salary and the Order delivered thereon by the 1<sup>st</sup> Respondent are explained in the Judgment in CA/WRIT/191/2013. In the said Order of the 1<sup>st</sup> Respondent, the issue of non-payment of gratuity was not addressed. The 1<sup>st</sup> Respondent in his objections says this is due to an oversight.

Whilst CA/WRIT/191/2013 was pending, the 1<sup>st</sup> Respondent had inquired into this matter and made the Order dated 25.08.2017 marked P38, whereby the Petitioner was directed to pay the 3<sup>rd</sup> Respondent gratuity in a sum of Rs. 2,719,034.50 for the 14-year period of the 3<sup>rd</sup> Respondent's employment in the Petitioner company from 12.10.1994 to 20.08.2009.

Although the P38 Order was made on 25.08.2017, the Petitioner filed this application on 01.02.2018 – five months after the Order. There has been a delay in filing this application. The Petitioner knows this, but endeavours to cover it up by highlighting P37 dated 10.01.2018 as the main document to be quashed by certiorari and tendering P38 as a secondary document, when in fact the Order sought to be quashed is contained in P38 which the Petitioner received several months earlier – *vide* P34.

The Petitioner seeks both P37 and P38 to be quashed by certiorari.

The Petitioner says the following in paragraph 37 of the petition:

*Thereafter, the Petitioner received letter dated 10.01.2018 sent by the 2<sup>nd</sup> Respondent directing the Petitioner to pay a*

*sum of Rs. 2,719,034.50 as gratuity. The said letter is annexed hereto marked P37 and letter dated 25.08.2017 is annexed hereto as P38 and is pleaded as part and parcel of this petition and affidavit annexed hereto.*

It is erroneous to say “*the Petitioner received letter (P37) dated 10.01.2018 sent by the 2<sup>nd</sup> Respondent directing the Petitioner to pay a sum of Rs. 2,719,034.50 as gratuity*”. P37 only directs the Petitioner to pay gratuity in accordance with the determination dated 25.08.2017 (P38).

In my view, this is a distortion of material facts, which alone disentitles the Petitioner to the relief sought.

Delay is also a ground for refusal of relief. Delay as a bar to relief in a writ application shall be decided on a case by case basis.

Be that as it may, let me now consider the grounds on which the Petitioner challenges the impugned Order for payment of gratuity. The Petitioner sets out four reasons in paragraph 38 of the petition.

Firstly, the Petitioner says the 1<sup>st</sup> Respondent could not have made the said Order when the question of whether the 3<sup>rd</sup> Respondent was an employee of the Petitioner company was pending adjudication before this Court in CA/WRIT/191/2013. This is not an acceptable objection. The impugned Order in CA/WRIT/191/2013 is in relation to arrears of salary. The present Order is in relation to payment of gratuity.

Secondly, the Petitioner says the Order was made in violation of the principles of natural justice inasmuch as the Petitioner was not given an opportunity to produce evidence that the 3<sup>rd</sup> Respondent was never an employee of the Petitioner company. The principal submission of the Petitioner at the argument was that the impugned Order on gratuity was made without an inquiry. This is belied by the Petitioner's own documents. In paragraph 14 of the statement of objections, the 1<sup>st</sup> Respondent, having admitted that the gratuity claim was not inquired into due to an oversight at the first inquiry, states in subparagraph (iv) "*Accordingly, the Petitioner was summoned for inquiry and several occasions the inquiry was held and parties were allowed to file their respective written submissions*". Although the Petitioner in the counter affidavit denies this and emphatically states no written submissions were filed, P34 dated 25.08.2017 produced by the Petitioner itself, makes it abundantly clear written submissions were in fact filed. This means the impugned Order was made after hearing the Petitioner. The fact that the Petitioner did not tender the relevant documents at the inquiry is beyond the control of the 1<sup>st</sup> Respondent.

Thirdly, the Petitioner says the impugned Order is contrary to the law, as it was made nearly five years after the complaint of the 3<sup>rd</sup> Respondent. The complaint P2 had been made in February 2013 and the first inquiry was held in May 2013. As already stated, the 1<sup>st</sup> Respondent did not address the gratuity claim in the impugned Order delivered pursuant to the first inquiry due to an oversight. The second inquiry was held in August 2017. There is no time limitation for inquiry into

gratuity claims under the Payment of Gratuity Act, No.12 of 1983, as amended. Hence this argument is unsustainable.

The final point the Petitioner makes is, since the 1<sup>st</sup> Respondent did not make a ruling on gratuity in the first Order, the 1<sup>st</sup> Respondent had no authority to make an Order in respect of gratuity several years later. This cannot be accepted for the reasons mentioned in relation to the third submission above.

The application of the Petitioner is dismissed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal