

IN THE SUPREME COURT OF DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an application for Leave to Appeal from the judgment dated 01.11.2013 in the High Court of Trincomalee in Appeal No. HCT/APPL/LT/10/2011 in terms of the High Court of Provincial (Special Provisions) Act No. 54 of 2006.

SC Appeal 12/2015

High Court Trincomalee Case

No. HCT/APPL/LT/10/2011

LT Case No. LT/TC/29/10

Wasala Mudiyansele Susitna

Kumara Dayarathne

No. 2, Thalgaswewa,

Agbopura, Kanthale.

Applicant

Vs

Onesh Trading (Pvt.) Ltd.,

No. 61/5, Kent Road,

Colombo 09.

Respondent

AND BETWEEN

Onesh Trading (Pvt.) Ltd.,

No. 61/5, Kent Road,

Colombo 09.

Respondent-Appellant

Wasala Mudiyansele Susitna
Kumara Dayarathne
No. 2, Thalgaswewa,
Agbopura, Kanthale.

Applicant-Respondent**AND NOW BETWEEN**

Wasala Mudiyansele Susitna
Kumara Dayarathne
No. 2, Thalgaswewa,
Agbopura, Kanthale.

Applicant-Respondent-Petitioner

Onesh Trading (Pvt.) Ltd.,
No. 61/5, Kent Road,
Colombo 09.

Respondent-Appellant-Respondent

BEFORE : Sisira J. De Abrew, J.
Upaly Abeyrathne, J.
K.T. Chitrasiri, J.

COUNSEL : Swasthika Arulingam for the Applicant-Respondent-
Petitioner.

Rasika Balasuriya with Samantha Dissanayake for
the Respondent-Appellant-Respondent.

ARGUED ON : 22.06.2016.

DECIDED ON : 23.11.2016

Sisira J. De Abrew, J.

The applicant-respondent-petitioner (hereinafter referred to as the applicant-petitioner) filed a case in the Labour Tribunal asking for compensation for unlawful termination of his services by the respondent-appellant-respondent (hereinafter referred to as the respondent company).

The learned President of the Labour Tribunal by his order dated 16.03.2011 granted compensation for unlawful termination of services of the applicant-petitioner. Being aggrieved by the said order of the President of the Labour Tribunal, the respondent company appealed to the High Court and the High Court by its order dated 01.11.2013 set aside the order of the learned President of the Labour Tribunal. Being aggrieved by the said order, the applicant-petitioner has filed this appeal. This Court by its order dated 21.01.2015 granted leave to appeal on the following questions of law set out in paragraphs 10 (1) to 10 (v) of the petition dated 11.12.2013 which are set out below.

- I. Did the learned High Court Judge err in Law by holding, in the absence of evidence before the Tribunal, that Known You Seeds (Pvt) Ltd has not appointed Onesh Trading (Pvt) Ltd as its agent in writing or verbally;
- II. Did the learned High Court Judge, in the absence of testimony, err in Law by holding that there is no clear evidence to establish the fact that Onesh Trading (Pvt) Ltd acts on the whole under the control of Known You Seeds (Pvt) Ltd;
- III. Did the learned High Court Judge in the absence of acceptable evidence err in law by holding that Known You Seeds (Pvt) Ltd and Onesh Trading (Pvt) Ltd have been incorporated as two different legal entities?
- IV. Did the learned High Court Judge, in the absence of reliable testimony, err in law by holding that Known You Seeds (Pvt) Ltd and Onesh Trading (Pvt) Ltd engage in the business of vegetable seed crop production and sales respectively and carry on two distinct business?
- V. Did the learned High Court Judge, err in law by setting aside the order of the learned President of the Labour Tribunal dated 16th

March 2011 which order was based on unchallenged facts adduced in evidence before the tribunal.

Although the leave was granted on the above questions of law, both Counsel made submissions on the question whether the applicant-petitioner was an employee of the respondent company. Therefore the main point that must be considered in this case is whether the applicant-petitioner was an employee of the respondent company. The applicant-petitioner, in his evidence, stated that the respondent company was established on 01.05.2009 and he worked in the respondent company from 01.05.2009 and his services were terminated on 21.10.2010. If this evidence is true, he was an employee of the respondent company for the period commencing from 01.05.2009 to 21.10.2010. Although he, in his evidence, stated the above facts, the respondent company has produced a document marked 'R1' to establish that his contributions to the Employees' Provident Fund (EPF) for May 2009 has been paid by a company called 'Known You Seeds (Pvt) Ltd'. This document establishes the fact that the applicant-petitioner was an employee of a company called Known You Seeds (Pvt) Ltd during the month of May 2009. Thus contention of the applicant-petitioner that he was an employee of the respondent company in May 2009 is therefore disproved by the above document. Further the respondent company has produced two Certificates of Incorporation marked 'R10' and 'R11' which establish the fact that Onesh Trading (Pvt) Ltd (respondent company) and Known You Seeds (Pvt) Ltd are two

different companies. The respondent company, in its answer filed in the Labour Tribunal, has stated that the applicant-petitioner was employed from May 2009 to 21.10.2010 by Known You Seeds (Pvt) Ltd. When I consider the above matters, I hold that the applicant-petitioner was not an employee of the respondent company and that he had no basis to file an application in the Labour Tribunal against the respondent company. When I consider the above facts, I hold the view that the application filed by the applicant-petitioner in the Labour Tribunal should have been dismissed.

For the above reasons, I hold the view that the 1st to 4th questions of law do not arise for consideration. I answer the 5th question of law in the negative. For the aforementioned reasons, I hold that the learned High Court Judge was correct when he set aside the order of the learned President of the Labour Tribunal. For the above reasons, I dismiss the appeal. However, when I consider the facts of this case, I do not make an order for costs.

Appeal dismissed.

Judge of the Supreme Court

Upaly Abeyrathne, J.

I agree.

Judge of the Supreme Court

K.T. Chitrasiri, J.

I agree.

Judge of the Supreme Court

