

SC.Appeal No. 160/2010

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

In the matter of an Application for Special Leave to Appeal to the Supreme Court from Judgment dated 28th August 2009 of the Court of Appeal in CA.Writ Application No. 159/2006.

SC.Appeal No. 160/2010

SC.Spl.LA.No. 225/2009

CA. Writ Application No. 159/2006

Ceylon Grain Elevators Limited,
15, Rock House Lane,
Colombo-15.

Petitioner-Petitioner

-Vs-

1. Mahinda Madihahewa,
Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
P.O.Box 575,
Colombo-05.
2. D.M.S.Dissanayaka,
Commissioner of Labour (Industrial
Relations)
Department of Labour,
Labour Secretariat,
P.O.Box 575,
Colombo-05.
3. K.M.Silva (Retired)
Deputy Commissioner of Labour
(Industrial relations)

Department of Labour,
Labour Secretariat,
P.O.Box 575,
Colombo-05.

4. Ooi Eng Hooi
No.10, Jalan Rk 6/12,
Rasah Kemayan
70300 Seramban,
Negeri Sembilan,
Malaysia.

Respondents-Respondents

Before: Sisira J.de Abrew, J

Priyantha Jayawardena, PC, J &

L.T.B.Dehideniya, J

Counsel: Kushan D' Alwis PC with Ms. Kaushalya Molligoda and Rajiv Wijesinghe for the Petitioner-Appellant.

Sanjay Rajaratnam PC, Acting SG with Rajitha Perera SSC for the 1st to 3rd Respondents.

Indra Ladduwahetti with Anuradhi Wickramasinghe for the 4th Respondent-Respondent.

Argued &
Decided on: 05.02.2020

Sisira J.de Abrew, J

Heard both counsel in support of their respective cases. In this case the 4th Respondent was employed in the Petitioner-Appellant's Company. The Commissioner of Labour by its letter dated 08.11.2005 directed the Petitioner-Appellant Company to pay gratuity to the 4th Respondent on the basis that he was employed in the Petitioner-Appellant's Company from 01st of June 1988 to 25th of July 2004 and he was drawing a salary of US\$ 5600 per month.

Being aggrieved by the said decision of the Commissioner of Labour, the Petitioner-Appellant's Company filed a writ application in the Court of Appeal challenging the said decision of the Commissioner of Labour. The Court of Appeal by its judgment dated 28.08.2009 refused the writ application of the Petitioner-Appellant's Company. Being aggrieved by the said Judgment of the Court of Appeal, the Petitioner-Appellant's Company filed this appeal in this Court.

This Court by its order dated 18.11.2010, granted leave to appeal on the following questions of law. The said questions of law are set out below in verbatim.

- 1) Whether the Court of Appeal has erred in its complete failure to consider the patent illegality of its order in stating that the last drawn salary of the 4th Respondent to have been US\$ 5600 which is arbitrary and utterly unsupported and contradicted by the material placed before the 3rd Respondent ?
- 2) Whether the Court of Appeal has erred in not considering the impact on the impugned order of complete failure of the 1st and/or 2nd Respondents to give reasons for the said order, despite a written request for the same by the Appellant Company ?

The main submissions of learned President's counsel for the Petitioner-Appellant's Company is that the 4th Respondent was not drawing a salary of US\$ 5600 per month. I now advert to the said argument. Although the learned President's counsel contented so, the document marked 'B', (page 322 of the brief) indicates that the 4th Respondent was receiving a basic salary of 3825 US\$ and monthly pensionable allowance of 1775 US\$. Thus he was drawing a salary of 5600 US\$ per month. When I consider the said document, I am unable to agree with the contention of learned President's Counsel. I therefore reject the said contention.

I also note that in the document marked 'D' (page 324 of the brief) , the 4th Respondent has worked in the Petitioner-Appellant's Company from 01st of June 1988 to 25th July 2004. Learned President's Counsel for the Petitioner-Appellant's Company next contended that the Commissioner of Labour has failed to give reasons . Although the learned President's counsel contended so, I note in the document marked '2R1 ' and the document marked 'X17'(page 332 of the brief), the Commissioner of Labour has given sufficient reasons for his decision. Therefore I am unable to agree with the said contention of the learned President's Counsel.

As I pointed out earlier the 4th Respondent has worked in the Petitioner-Appellant's Company from 01st of June 1988 to 25th of July 2004 and he was drawing a monthly salary of 5600 US\$ per month . Vide document marked 'B' (page 322 of the brief). When I consider all the above matters, I hold that the decision taken by the Commissioner of Labour is correct. When I consider all the above matters, I hold that the Court of Appeal was correct when the Court of Appeal dismissed the writ application filed by the Petitioner-Appellant's Company.

For the aforementioned reasons, I answer the above two questions of law in the negative. For the aforementioned reasons, I affirm the Judgment of the Court of Appeal dated 28.08.2009 and dismiss this appeal with costs.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena, PC, J

I agree.

JUDGE OF THE SUPREME COURT

L.T.B.Dehiddeniya, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-