

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

In the matter of an Application for Special Leave to Appeal under the Provisions Article 128 (2) of the Constitution of Democratic Socialist Republic of Sri Lanka

D.M.Karunaratne,
Acting Deputy Commissioner of Labour,
Legal Section,
Colombo 05.

Complainant

SC Appeal 114/2021

SC. Special L.A. No. 292/2019

CA (PHC) Application No. 25/2015

Provincial H.C. of North Western

Province sitting in Chilaw

Case No. HCRA 3/2015

MC Chilaw Case No. 59666

Vs,

Bhuwelka Steel Industries (Sri Lanka) Ltd.

No. 65/2, Sir Chittampalan A. Gardiner Mawatha,

Colombo 02.

Presently at,

No. 5/5, -10, East Tower,

5th Floor, WTC, Echelon Square, Colombo 01.

Respondent

And Between

Bhuwelka Steel Industries (Sri Lanka) Ltd.

No. 65/2, Sir Chittampalan A. Gardiner Mawatha,

Colombo 02.

Presently at,

No. 5/5, -10, East Tower,

5th Floor, WTC, Echelon Square, Colombo 01.

Respondent -Petitioner

Vs.

D.M.Karunaratne,
Acting Deputy Commissioner of Labour,
Legal Section,
Colombo 05.

Complainant-Respondent

And Between

Bhuwelka Steel Industries (Sri Lanka) Ltd.
No. 65/2, Sir Chittampalan A. Gardiner Mawatha,
Colombo 02.

Presently at,
No. 5/5, -10, East Tower,
5th Floor, WTC, Echelon Square, Colombo 01.

Respondent -Petitioner-Appellant

Vs.

D.M.Karunaratne,
Acting Deputy Commissioner of Labour,
Legal Section,
Colombo 05.

Complainant-Respondent-Respondent

And now between

Yapa Appuhamilage Mithila Madavi Yapa
Acting Deputy Commissioner of Labour,
Legal Section,
Colombo 05.

Complainant-Respondent-Respondent-Appellant

Vs,

Bhuwelka Steel Industries (Sri Lanka) Ltd.

No. 65/2, Sir Chittampalan A. Gardiner Mawatha,
Colombo 02.

Presently at,

No. 5/5, -10, East Tower,

5th Floor, WTC, Echelon Square, Colombo 01.

Respondent -Petitioner-Appellant-Respondent

Before: Hon. Vijith K. Malalgoda, PC J
Hon. S. Thurairaja, PC J
Hon. Janak de Silva, J

Counsel: N. Wigneshwaran, DSG, for the Complainant-Respondent-Respondent-Appellant.
Dr. Sunil Coorey for the Respondent-Petitioner-Appellant-Respondent.

Argued on: 09.11.2022

Decided on: 01.03.2023

Vijith K. Malalgoda PC J

The Complainant – Respondent – Respondent – Appellant (hereinafter referred to as “the Appellant”) instituted proceedings by filing a Certificate under Section 3 (D) (2) read with Section 53 and 63 of the Wages Board Ordinance No. 27 of 1941, as amended (hereinafter referred to as the Ordinance) before the Magistrate’s Court of Chilaw, against the Respondent – Petitioner – Appellant – Respondent (hereinafter referred to as “the Respondent”) in order to recover a sum of Rs. 300,000.51, as unpaid salaries of two workmen for the period from 01/06/2009 to 31/08/2011. After an inquiry, by permitting

the Respondent to file objections as well as written submissions the learned Magistrate delivered the Order dated 18/12/2004 directing to recover the said amount from the Respondent as a fine.

Being aggrieved by the said Order, the Respondent made a revision application before the High Court of North Western Province, holden at Chilaw. The learned High Court Judge delivered his order dated 11.03.2015 refusing to issue Notices on the Respondent and affirming the order of the learned Magistrate of Chilaw.

The Respondent appealed against the said order to the Court of Appeal seeking to set aside the said High Court Order. In this particular application made to the Court of Appeal, the main argument of the Appellant was that the certificate filed by the Respondent is not a valid certificate within the meaning of the Section 3D (2) of the Ordinance, as it does not contain necessary details of the workmen and does not identify the type of work done by the workmen which is an imperative requirement of the law. Based on this argument and upon the perusal of the certificate filed in terms of Section 3D (2) of the Ordinance, the Court of Appeal held that the alleged certificate which is in the appeal brief at page 463 does not provide particulars as required under the Ordinance. Accordingly, the court observed that the said certificate cannot be considered as a certificate valid in law. Thus, the court allowed the appeal and set aside the Order of the learned High Court Judge and the Order of the learned Magistrate.

Being aggrieved by the said Judgment of the Court of Appeal, the Appellant made this application to the Supreme Court on 02/08/2019, seeking special leave from this Court.

When this matter was supported on 15/12/2021 for granting of special leave, this Court was inclined to grant Special Leave on the questions of law appeared in Paragraph 13 (a), (b) and (f) of the Petition dated 02/08/2019, which states as follows:

- (a) Has the Court of Appeal erred in law when referring to a Certificate at page 7 of the Judgment, filed under Section 3D (2) of the Wages Boards Ordinance in another case bearing No. 49888 in the Magistrate's Court of Chilaw, to the facts of this case where the certificate was filed in case No. 59666 in Magistrate's Court of Chilaw?
- (b) Has the Court of Appeal failed to consider and/or completely overlooked that the certificate and the Notice filed in terms of Section 3D (2) and 46 (2) of the Wages Boards Ordinance in the Magistrates Court bearing No. 59666 in the Appeal brief at pages 54, 55, 56, 36, 37 and 38 which set out the particulars as required by law?

- (f) Has the Court of Appeal failed to consider and/or completely overlooked the fact that the Respondent never raised any objection before the learned Magistrate or the Honourable High Court Judge that the certificate contains no particulars/ or insufficient particulars of the sum claimed allegedly due?

As observed by this Court, the Court of Appeal Judgement was solely based on the Certificate filed against the Respondent. In their order the Court of Appeal held;

“The Certificate filed in terms of Section 3D (2) in the appeal brief at page 463 does not give particulars as required, constitutes sufficient reason to prevent the execution of the certificate. Therefore, the said certificate cannot be considered as a certificate valid in law” (Volume 1, Page 95-97).

However, in the present case, the main argument of the Appellant is that, although the Court of Appeal relied on the certificate at Page 463 of the brief, the said certificate is in respect of another case which is No. 49888 filed in Magistrate’s Court of Chilaw. The learned Counsel for the Appellant argued that this is not the correct certificate, since the correct certificates are at pages 36, 37 and 38 as well as 54, 55 and 56 of the brief. On perusal of those documents filed relating to the Magistrate’s Court of Chilaw Case No. 59666, which is the number allocated to the main case, it is revealed that the correct documents have been filed accordingly and it provides all the necessary details including the number of employees as well as the individual amounts due and the basis therefor.

It is clear that, the learned Judges of the Court of Appeal has arrived at its decision by oversight. Therefore, it can be concluded that the certificate referred to in the Court of Appeal Judgment at page 7 does not relate to the present case, as it was in another case bearing No 49888 in the Magistrate’s Court of Chilaw. It is also observed that the learned Judges in the Court of Appeal has failed to consider the correct Certificate and the Notice filed in terms of Section 3D (2) and 46 (2) of the Wages Board Ordinance in the Magistrate’s Court Case bearing No. 59666 which is available in the Appeal brief which set out the particulars as required by law.

On the other hand, when scrutinizing the issues raised before the lower Courts, it is also revealed that the Respondent did not even raise the question of inadequacy of details in the certificate before the Magistrate’s Courts or even before the High Court. This is because the main objection of the Respondent was totally based on the non-existence of a Wages Board for the steel industry. It is clear that this question on the necessary details of the said certificate was raised for the first time before

the Court of Appeal and the learned Judges in the Court of Appeal have overlooked the fact that the Respondent never raised the said objection before the Magistrate's Court or the High Court.

I therefore answer all three questions of law raised in the instant case in the affirmative. For the reasons given in this Judgment we allow the appeal and set aside the Order made by the learned Judges of the Court of Appeal. We affirm the Order made by the learned Magistrate and the learned Judge of the High Court of the North Western Province holden in Chilaw.

Appeal allowed.

Judge of the Supreme Court

Justice S. Thurairaja, PC

I agree,

Judge of the Supreme Court

Justice Janak de Silva,

I agree,

Judge of the Supreme Court