

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

In the matter of an application for Special Leave to appeal against the Judgment dated 02nd May 2018 of the Court of Appeal Application No.CA(Writ) 152/2015.

SC.SPL. LA NO.160/2018

C.A.Writ Application No.152/2015

S.P. Morawaka

Liquidator,

Janatha Fertilizer Enterprise Limited,

19, Dhawalasingharama Mawatha,

Colombo 15.

Petitioner

Vs.

1. Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
Colombo 5.
2. Assistant Commissioner of Labour
(Colombo North),

District Labour Office, 4th Floor,
Labour Secretariat,
Department of Labour,
Colombo 5.

- 3 Labour Officer,
District Labour Office,
Department of Labour,
Anuradhapura.
4. Assistant Commissioner of Labour,
District Labour Office,
Anuradhapura.
5. D.K. Wijesundara,
No.741/3, Freeman Mawatha,
Anuradhapura.
6. Assistant Secretary (Admission),
Ministry of Agriculture,
“Govijana Mandiraya”,
Battaramulla.

Respondents

AND NOW BETWEEN

D.K. Wijesundara,
No.741/3, Freeman Mawatha,
Anuradhapura.

5th Respondent-Petitioner

Vs.

S.P. Morawaka
Liquidator,
Janatha Fertilizer Enterprise Limited,
19, Dhawalasingharama Mawatha,
Colombo 15.

Petitioner-Respondent

1. Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
Colombo 5.
2. Assistant Commissioner of Labour
(Colombo North),
District Labour Office, 4th Floor
Labour Secretariat,
Department of Labour,
Colombo 5.

3. Labour Officer,
District Labour Office,
Department of Labour,
Anuradhapura.
4. Assistant Commissioner of Labour,
District Labour Office,
Anuradhapura.
5. Assistant Secretary (Admission),
Ministry of Agriculture,
“Govijana Mandiraya”,
Battaramulla.

**1st, 2nd, 3rd, 4th and 6th Respondents-
Respondents**

BEFORE : **SISIRA J. DE ABREW, J.**
NALIN PERERA, J. &
MURDU N.B. FERNANDO, PC, J.

COUNSEL : Chula Bandara with Anuradha Dias for the 5th
Respondent-Petitioner.
Thilan Liyanage with Sahan Vas Gunawardena for the
Petitioner-Respondent.
Vicum de Abrew DSG for the Attorney-General.

ARGUED &
DECIDED ON : 04.10.2018.

SISIRA J. DE ABREW, J.

Heard Counsel in support of their respective cases. We are inclined to grant Leave in this case. Leave to Appeal is granted on questions of law stated in paragraph 12 “b” & “c” of the Petition dated 12.06.2018 which are set out below;

- b. Did their Lordships of the Court of Appeal misinterpret the impugned document P21 to come to the conclusion that it refers to the imposition of personal liability on the respondent liquidator?
- c. If so, did their Lordships of the Court of Appeal err in law by quashing the award embodied in the impugned document marked P21?

Parties now agree to argue the main case and the submissions were made by the parties in respect of the main case. The 5th Respondent-Petitioner (D.K. Wijesundara) was working in this particular Company called Janatha Estate Fertilizer Enterprises Ltd., from 1981. The Commissioner of Labour by its letter dated 09.10.2014 directed the Liquidator of the Company to pay Rs.2,136,415.50 to D.K. Wijesundara, the 5th Respondent-Petitioner. Being aggrieved by the said decision of the Commissioner of Labour (P21) the Liquidator (Petitioner-Respondent) filed this case in the Court of Appeal seeking to quash the said document marked P21. The Court of Appeal by its judgment dated 02.05.2018 exercising the writ jurisdiction quashed the said document marked P21. We note that the 5th Respondent-Petitioner (D.K. Wijesundara) has been working in the said Company from 1981 and he is entitled to the said amount. The Company is now under Liquidation. Under Section 47 of the Employees’ Provident Fund Act No. 15 of 1958 as amended by Act No. 16 of 1970, 08 of 1971, 24 of 1971, 26 of 1981, 01 of 1985, 42 of 1988, 14 of 1992 the employer includes Liquidator of a Company. Thus, when the Company is

under Liquidation, it becomes a duty of the Liquidator to comply with the direction given by the Commissioner of Labour marked P21.

Learned Counsel appearing for the Petitioner-Respondent (the Liquidator) too agrees with this position. When we consider the above matters, we are of the opinion that the Court of Appeal was in error when they quashed the said document marked P21. We therefore answer the above questions of law in the affirmative.

For the above reasons, we set aside the judgment of the Court of Appeal dated 02.05.2018 and dismiss the Writ application filed by the Petitioner-Respondent in the Court of Appeal.

Appeal allowed.

JUDGE OF THE SUPREME COURT

NALIN PERERA, J.

I agree.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

Mks