

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 of the
Democratic Socialist Republic of Sri Lanka, in
terms of Article 128 (2) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

SC Appeal 20/2024 & 21/2024

**SC SPL LA No: 236/2023 &
237/2023**

**Court of Appeal:
CA/PHC/100/2018 &
CA/PHC/146/2018**

Assistant Commissioner of Labour
(Colombo East)
Colombo East District Office,
Labour Secretariat,
Labour Department, Colombo 5.

PLAINTIFF

Vs.

Laksiri International Freight Forwarders
Private Ltd
Of No. 31, St. Anothony's Mawatha,
Colombo 03.

RESPONDENTS

AND BETWEEN

Laksiri International Freight Forwarders
Private Ltd
Of No. 31, St. Anothony's Mawatha,
Colombo 03.

RESPONDENT-PETITIONER

Vs.

Assistant Commissioner of Labour
(Colombo East)
Colombo East District Office,
Labour Secretariat,
Labour Department, Colombo 5.

PLAINTIFF-RESPONDENT

AND BETWEEN

Laksiri International Freight Forwarders
Private Ltd
Of No. 31, St. Anothony's Mawatha,
Colombo 03.

RESPONDENT-PETITIONER-

APPELLANT

Vs.

Assistant Commissioner of Labour
(Colombo East)
Colombo East District Office,

Labour Secretariat,
Labour Department, Colombo 5.

PLAINTIFF-RESPONDENT-
RESPONDENT

AND NOW BETWEEN

Laksiri International Freight Forwarders
Private Ltd
Of No. 31, St. Anothony's Mawatha,
Colombo 03.

RESPONDENT-PETITIONER-
APPELLANT-APPELLANT

Vs.

Assistant Commissioner of Labour
(Colombo East)
Colombo East District Office,
Labour Secretariat,
Labour Department, Colombo 5.

PLAINTIFF-RESPONDENT-
RESPONDENT-RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
KUMUDINI WICKREMASINGHE, J. AND
K. PRIYANTHA FERNANDO, J.

COUNSEL: Ms. Manoli Jinadasa with Ms. Dilini Reeves instructed by Ms. Geethanjali Amarasinghe for the Respondent-Petitioner-Appellant-Appellant

Manohara Jayasinghe, DSG for the Plaintiff-Respondent-Respondent-Respondent

WRITTEN Respondent-Petitioner-Appellant-Appellant on 19th November 2024

SUBMISSIONS: Plaintiff-Respondent-Respondent-Respondent on 23rd December 2024

ARGUED ON: 22nd October 2024

DECIDED ON: 14th February 2025

THURAIRAJA, PC, J.

1. At the very root of the narrative which concerns the instant appeal is a lady by the name of Weeralatha and her husband, B.S.A. Silva, who, claiming to be employees of M/s Laksiri International Freight Forwarders Private Ltd. (the Appellant), had made a complaint to the Commissioner General of Labour with regard to non-payment of their gratuity in terms of the *Payment of Gratuity Act, No. 12 of 1983 (as amended)*.
2. M/s Laksiri International Freight Forwarders Private Ltd is a business more commonly known under the brand names 'Laksiri Seva' and 'Laksiri International' providing services to Sri Lankans in the Middle East to ship their personal belongings when migrating.

3. The Appellant states that it engages a network of foreign service providers, including companies which provide shipping, freight as well as air cargo services. According to the Appellant, such service providers use the Appellant's branding 'Laksiri Seva' or 'Laksiri International' in conducting their businesses in order to promote their own businesses in their respective countries.
4. The complaint of the Virtual Complainant, P.G.I. Weeralatha, as already noted, is that she was an employee of the Appellant from 01st April 1995 to 20th October 2011 in Dubai and that the Appellant defaulted her EPF and gratuity payments. The position of the Appellant with regard to this complaint had been a simple one throughout—that is, they never employed the said Weeralatha.
5. Following this complaint, the Plaintiff-Respondent-Respondent-Respondent (hereinafter sometimes referred to as the 'Respondent') had held an inquiry and the Appellant had filed written submissions on 23rd January 2013 stating that they did not operate a branch in Dubai or anywhere else in the world except within Sri Lanka. The Appellant states that it requested the supporting documents and written submissions submitted by Weeralatha be furnished to it. The Appellant had further reserved the right to file additional written submissions after perusing these supporting documents. However, the Labour Department had neither summoned the Appellant again nor informed the Appellant of any finding against it.
6. The Appellant states that it did not get an opportunity to peruse and respond to the documents submitted by the Virtual Complainant before the Labour Department. Thereafter, on 02nd March 2016, the Respondent had filed a certificate in the Magistrate Court of Colombo under Section 8(1) of the *Payment of Gratuity Act, No. 12 of 1983 (as amended)* seeking the enforcement of an order to recover Rs. 215,837.28 as gratuity and a further Rs. 64,751.18 as surcharges with respect to the said payment of gratuity to the

Virtual Complainant, P.G.I. Weeralatha. The Appellant states that it was not informed of any decision taken against them and that a 'red notice' was not sent to them, which is contrary to the usual practice.

7. Upon receiving summons from the Magistrate's Court, the Appellant had appeared before the Court and made several objections. The Magistrate's Court by Order dated 10th May 2018 has ordered the Appellant to pay the amount specified in the certificate as a fine, as may be deemed in terms of the Act, and has imposed 3 months imprisonment in default thereof.
8. Aggrieved by the said Order of the Magistrate's Court, the Appellant had invoked the revisionary jurisdiction of the Provincial High Court of Colombo. The High Court, by Order dated 10th August 2018, has refused to issue notices dismissing the application. Aggrieved by said the Order, the Appellant had then appealed to the Court of Appeal, simultaneously preferring a revision application to the Court of Appeal as well. In a single consolidated Judgment, dated 14th July 2023, the Court of Appeal has dismissed the appeal of the Appellant subject to costs.
9. Both parties have moved to deliver a single consolidated judgment in both SC Appeal 20/2024 and SC Appeal 21/2024, and this Court granted leave on the following question of law:

"Whether the Court of Appeal, Provincial High Court and the Magistrate's Court erred in law in awarding the payment of gratuity to P.G.I. Weeralatha (purported workman) when there is insufficient evidence to establish an employer-employee relationship between her and the Petitioner [Appellant]?"
10. Accordingly, the only question this Court is confronted with is whether or not there is an employer-employee relationship between the Virtual Complainant and the Appellant.

11. The Appellant contends that any and all documents the Virtual Complainant has presented before the Respondent, except for one document, which the Appellant claims to be a forgery, are documentation that relates to foreign companies, some of which were in the Appellant's network of service providers.
12. The single document which relates to the Appellant, marked 'P1',¹ which is a letter dated 28th July 2000 addressed to The Finance Co. Ltd., carries the letterhead of the Appellant and is purportedly signed by its Chairman, one M.S.M. Ruwaisden. The contents of this purported letter certify that Mrs. Pimidiya Gedera Irin Weeralatha has been employed as a receptionist at the Appellant's branch office in Ajman, United Arab Emirates from the year 1995 and further state that a salary of 900 UAE Dirhams been paid by the said office in Ajman.
13. It was the position of the Respondent that such a singular document was sufficient to establish the employer-employee relationship, citing in support the judgment of Samayawardhena, J. for the Court of Appeal (as His Lordship then was) in **Cinnamon Hotel Management Limited v. Commissioner General of Labour**.² While I agree with this proposition, we must necessarily inquire into the genuineness as well as the probative value of this document marked 'P1'.
14. The Appellant alleges this letter to be a forgery. However, as the learned Deputy Solicitor General contended, the Appellant did nought to support this allegation. The Appellant did not make any complaints to the Criminal Investigation Department or the Fraud Investigation Bureau regarding the alleged forgery. Moreover, they could have provided

¹ The letter is marked as 'P1' in the Colombo Magistrate Court Record marked 'X1'

² SC Writ 284/2015, CA Minutes of 25th July 2019

an affidavit from the author of the purported letter, Mr. Ruwaisden, speaking to the authenticity of the letter. None of these things have been done.

15. The Appellant contended that it should not be required to prove a negative, citing the recent judgment of this Court in **Multi Form Chemicals Limited v. Adrian Machado**³ wherein Janak De Silva, J. opined as follows:

*"Moreover, the Respondent cannot be asked to prove the negative, namely that the purchase orders were not issued by him. In **Laxmibai (Dead) Thru Lr'S. and Another v. Bhagwanthbuva (Dead) Thru Lr'S. and Others [Civil Appeal No. 2058 of 2003, Decided on 29.01.2013]** the Indian Supreme held (at para. 15) that a negative fact cannot be proved by adducing positive evidence.*

*Nanda Senanayake in Legal Maxims and Phrases [1st ed. (Printed by author, 2023), pages 434-436] states that a negative is usually incapable of proof. The decision in **New Indian Assurance Company Ltd. v. Nusli Neville Wadiya and Another [Case No. Appeal (Civil) 5879 of 2007, Decided on 13.12.2007]** is cited in support. There, the Supreme Court of India referred (at para. 54) to the legal maxim, *ei incumbit probatio qui dicit, non qui negat* (The burden of proving a fact rest on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable or proof)."⁴*

16. The authenticity of this letter is, in fact, questionable. Granted, the letter is printed on the Appellant's stationery, but it does not bear the Appellant's seal. At no stage has this letter been verified, nor has it been certified as a true copy. What is available is a mere

³ S.C. Appeal No. 183/2011, SC Minutes of 18th July 2024

⁴ *ibid* at 15

photocopy of a letter which appears to carry the signature of the then-chairman. The probative value of such a document, needless to say, is little.

17. The learned Magistrate as well as the judges of the High Court and the Court of Appeal have placed heavy reliance on this document in arriving at their respective conclusions. In this, they have erred. It must also be noted that the Appellant did not have an opportunity to respond to this document until all such documents were filed before the Magistrate's Court.
18. Many other documents submitted by the Virtual Complainant are available in the Magistrate's Court Record. However, none supports the position that the Virtual Complainant was an employee of the Appellant company. The document marked 'P2' is purportedly a profit and loss account from April to July 2011. It carries not the name of the Appellant company but of a company by the name of 'Capitol Freight Systems LLC – Ajman'. This, too, is a mere photocopy which has not been authenticated. It contains an expense entry of 3,600—presumably UAE Dirhams, as the account itself does not indicate the currency—labelled 'Salary – Latha'.
19. The name 'Capitol Freight Systems LLC' appears once more in a document marked 'P5' in the Magistrate's Court Record. More precisely, this document (labelled a sales report) mentions the company name as 'Capitol Freight System LLC Cargo Services (Laksiri Internationell)'. A near identical document, marked 'P4', relates to a company named 'Al Robban Shipping, Tourism & Cargo Services. Dubai U.A.E. (Laksiri Internationell)'. Neither of these documents has been certified as authentic. Although neither of the parties pointed out, the Court observed that both have misspelt the word 'international' as internationell'. This naturally leads any reasonable mind to doubt the authenticity of these documents.

20. More importantly, the Appellant contends that, even if they had any branches in the UAE at the time, the Virtual Complainant could not have been employed with them as she had not had work visas during such time she claimed to have been an employee of the Appellant Company. None of the documents before us, but for one, speaks of her visa.⁵ This document indicates her profession as 'housewife' as of 06th February 2010. This clearly contradicts the position of the position of the Virtual Complainant that she was employed by the Appellant from 01st April 1995 to 20th October 2011. In their judgments, the learned Magistrate and the judges of the High Court as well as the Court of Appeal have failed to take due cognisance of the aforementioned.
21. For the foregoing reasons, I am of the view that sufficient evidence has not been adduced to establish an employer-employee relationship between the Virtual Complainant and the Appellant. Accordingly, the question of law is answered in the affirmative.
22. Having answered the question of law as such, I would be remiss if I said nothing of the Commissioner's function under Section 8(1) of the *Payment of Gratuity Act*. As the learned Deputy Solicitor General submitted, in an inquiry conducted by the Commissioner under and in terms of this section, a 'court-like' meticulousness cannot reasonably be expected. However, it must not be forgotten that the Commissioner in conducting such inquiries performs a quasi-judicial function.
23. Indeed, the employer-employee relationship is hardly one where there is equal bargaining power and the power dynamic, axiomatically, is tilted towards the employer. That is the very reason why the law empowers courts of law to use just and equitable jurisdiction in adjudicating various aspects of labour relations. However that may be,

⁵ Supreme Court Brief of SC Appeal No. 20/2024 at p. 125; Supreme Court Brief of SC Appeal 21/2024 at p. 129

courts of law, as well as all such authorities performing quasi-judicial functions, must adhere to the principles of natural justice.

24. In the instant case, the Appellant ardently pointed out that they were not afforded an opportunity to peruse the documents submitted by the Virtual Complainant to the Commissioner. This is a serious violation of the principle *audi alteram partem*, which is a cornerstone of fair and impartial administration of justice.
25. Accordingly, the appeal is allowed. The decisions of the Magistrate's Court, the High Court and the Court of Appeal as well as the certificate issued by the Commissioner of Labour are hereby set aside. No orders as to costs.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT