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

In the matter of an appeal made in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / APPEAL / 131 / 2013

SC / SPL / LA / 90 / 2013

CA / WRIT / 685 / 2010

Gintota Plywood Manufacturers (Pvt) Limited,

282 C, Galle Road,

Colombo 03.

PETITIONER

-Vs-

1. **Upali Wijeweera,**
   Commissioner of Labour,
   Department of Labour,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

2. **H.R.L. Sugathadasa,**
   Assistant Commissioner of Labour,
   District Labour Office,
   Galle.

3. **A.N.W. Perera,**
   Deputy Commissioner of Labour,
   Legal Division,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

RESPONDENTS

AND NOW BETWEEN

Gintota Plywood Manufacturers (Pvt) Limited,
282 C, Galle Road,
Colombo 03.

PETITIONER – APPELLANT

-Vs-

1. **Upali Wijeweera,**
   Commissioner of Labour,
   Department of Labour,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

2. **H.R.L. Sugathadasa,**
   Assistant Commissioner of Labour,
   District Labour Office,
   Galle.

3. **A.N.W. Perera,**
   Deputy Commissioner of Labour,
   Legal Division,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

4. **V.B.T.K. Weerasinghe,**
   Commissioner of Labour,
   Department of Labour,
   Labour Secretariat,
   Narahenpita,

Colombo 05.

5. **W. Punchihewa,**
   Assistant Commissioner of Labour,
   District Labour Office,
   Galle.

6. **D.M. Karunarathna,**
   Deputy Commissioner of Labour,
   Legal Division,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

RESPONDENT – RESPONDENTS

Before: A.H.M.D. Nawaz, J.
Arjuna Obeyesekere, J. &
K. Priyantha Fernando, J.

Counsel: Farzana Jameel, PC with Amani Mackie for the Petitioner – Appellant.
Susantha Balapatabendi, PC, SDSG with Sabrina Ahmed, SSC for the Respondent – Respondents.

Argued on: 02.06.2025

Decided on: 07.05.2026

A.H.M.D. Nawaz, J.

1. The Petitioner – Appellant, Gintota Plywood Manufacturing (Pvt) Limited (hereinafter referred to as "the Appellant company" or the "Appellant"), filed an application for judicial review in the Court of Appeal seeking, *inter alia*, the following reliefs: a writ of *certiorari* quashing the decision of the 2nd Respondent, the Deputy Commissioner of Labour, contained in the notice marked "F"; a writ of *prohibition* prohibiting the Respondents from acting on the decision marked "F"; and a writ of *mandamus* directing the Respondents to withdraw the prosecution in case No. 26114 instituted in the Magistrate's Court of Galle.

2. The impugned decision "F" was made by the 2nd Respondent under Section 46(3) of the Wages Board Ordinance No. 27 of 1941 as amended (hereinafter "the Wages Board Ordinance"), whereby it was held that 157 workmen of the Appellant's Plywood Manufacturing Industry were entitled to the wages prescribed by the Wages Board established for the engineering trade. In the wake of that decision, a certificate bearing case No. 26114 was filed in the Magistrate's Court of Galle against the Appellant by the 3rd Respondent under section 3D (2) of the Wages Board Ordinance to recover a sum of Rs. 1,382,704.75/- as wages in deficit for the period between 01 May 2007 and 30 November 2007.

3. The Court of Appeal, by its judgment dated 20 February 2013, dismissed the application of the Appellant. The Appellant thereafter sought special leave to appeal to this Court, and this Court granted special leave to appeal on the following questions of law;

a) *Did the Commissioner of Labour have the power to extend, by the notice marked "F" dated 30.09.2008, the provision relating to the Wages Board determinations in respect of the "Engineering Trade" to employees in the plywood industry?*

b) *Did the Commissioner of Labour, in any event, have the power to apply the order marked "F" retrospectively to dates prior to the date of the said order?*

4. The Appellant company is the successor to the former "Ceylon Plywood Corporation", which was incorporated as a government-sponsored corporation in the year 1958. In or about 1993 and 1994, the Ministry of Industries, Science and Technology invited the public to purchase the said company with its assets and liabilities. The Chairman of the Appellant company at the time of the filing of the application to the Court of Appeal tendered an offer to purchase "Lanka Plywood Products Limited", and the Ministry accepted that offer. The company was thereafter renamed as "Gintota Plywood Manufacturers (Pvt) Limited" and was incorporated as a private limited liability company under the Companies Act of Sri Lanka.

5. The nature and types of machinery used, and the job description of the employees of the Appellant company's predecessors and of the Appellant company, are virtually the same. The Department of Labour had never, prior to the notice "F" dated 30 September 2008, categorized the employees of the Appellant company or its predecessors as falling within the Engineering Trade, notwithstanding that the Wages Board for the Engineering Trade had been in existence as far back as the year 1945. It was on 10 August 2008 that the Respondents determined, for the first time, that the employees of the Appellant company must be classified into the category of the Engineering Trade. Pursuant to that determination, the 3rd Respondent filed action in the Magistrate's Court of Galle under section 3D(2) of the Wages Board

Ordinance, No. 27 of 1941, as amended, declaring that a sum of Rs. 1,382,704.75/- was due as additional wages to 157 employees of the Appellant company for the period from 10 May 2007 up to 30 November 2007.

6. What transpired in the Magistrate's Court of Galle is both relevant and revealing. The aforesaid sum was the subject of discussions between the Appellant and the Respondents. As the records of the Magistrate's Court indicate, an amended certificate was submitted to that Court on or about 07 January 2010. At that stage, being satisfied with the sum mentioned in the amended certificate, the Appellant agreed and undertook the liability to make payment of the sum mentioned therein to its workers. On the strength of that undertaking, the learned Magistrate of Galle ordered and directed the Appellant to settle the dues on installments of Rs. 100,000/- each.

7. Subsequently, as conceded by the learned President's Counsel for the Appellant, the Appellant company took a volte-face. Instead of discharging the liability it had undertaken, the Appellant moved for further time to deliberate upon the matter and to discuss matters further with the Respondents. In due course, the writ application to the Court of Appeal resulted from this about-turn.

The Doctrine of Approbate and Reprobate, Estoppel, and the Exercise of Discretionary Remedies

8. I turn first to what I consider the primary basis on which this appeal falls to be determined, namely, the conduct of the Appellant, which is inextricably intertwined with the doctrines of approbate and reprobate and estoppel, and the discretionary nature of the remedies of *certiorari, prohibition, and mandamus*.

9. The Appellant's conduct admits of careful analysis. First, the Appellant never, during the course of its discussions with the Respondents, contested, challenged, or questioned the *vires, validity, or legitimacy* of the decision marked "F". Second, the Appellant positively agreed to an adjustment of the monies specified in the original certificate, and by so doing implicitly accepted the validity of the decision marked "F". Third, and most significantly, the Appellant undertook in open court the liability to settle the adjusted monies specified in the amended certificate, without raising any objection to, or challenge of, the validity of the decision "F". Fourth, it was only after accepting that liability and indeed after the Magistrate had made an order based on that undertaking that the Appellant, in what can only be described as an afterthought and a well-considered strategy to delay and default on its payment obligations to its workers, moved the writ application in the Court of Appeal. Furthermore, the Wages Board decision for the engineering trade not being applicable to the plywood industry was never a matter raised by the Appellant during those discussions with the Respondents.

10. The legal consequence of this conduct is plain. The Appellant's act of accepting the liability to pay the monies to its workers amounts to an approbation of the decision marked "F". The Appellant cannot thereafter, by filing a writ application challenging the *vires* of that very decision, reprobate what it had earlier accepted and approbated. The doctrine of approbate and reprobate, which is an expression of the broader principle of estoppel, is well settled in our law. A party cannot blow hot and cold; it cannot accept benefits or acknowledge obligations arising from a decision or a transaction and then turn around and seek to impugn the very act or decision from which those consequences flow. The Appellant is accordingly estopped from challenging the validity of the decision marked "F". I had occasion to allude to the doctrine of approbate and reprobate in the cases of ***The Young Men's Buddhist***

Association v. Commissioner General of Inland Revenue[1]; ***Chintha Kumari Egodawela v. Kapila Ananda Rajapakshe***[2]**.**

11. Additionally, the Appellant was guilty of laches. The notice marked "F" was issued on 24 September 2008. The Appellant sought to quash it by way of *certiorari* in the Court of Appeal only on 15 October 2010, a delay of more than two years. During that intervening period, the Appellant participated in proceedings in the Magistrate's Court, engaged in negotiations with the Respondents, agreed to the amended certificate, and undertook to pay in installments. No explanation has been offered for this unconscionable delay. The law has consistently refused to assist those who are negligent for a long and unreasonable time in enforcing their rights. As it was observed, in terms that bear repetition, in the context of the doctrine of laches: "If a person is negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law to punish his neglect, *nam leges vigilantibus non dormientibus subveniunt*, and other reasons refuses to assist those who sleep over their rights and are not vigitlent." The Appellant failed to meet this most basic requirement.

12. The remedies of *certiorari, prohibition, and mandamus* are discretionary remedies. They are not available as a matter of right, and this Court retains the discretion to decline to grant them having regard to the conduct of the party seeking them, the delay involved, and the prejudice that would be caused to those who would be affected if the relief were granted. In the present case, the 157 workers of the Appellant company who are at the receiving end of all this litigation would be materially and seriously prejudiced if the impugned decision were quashed at this stage. The Appellant has not only failed to come to this Court with clean hands, it has also failed to disclose any compelling reason why this Court should exercise its discretion in its

[1] SC / APPEAL / 93 / 2020 (SC minutes of 29.04.2026)
[2] SC / APPEAL / 34 / 2022 (SC minutes of 19.03.2026)

favour. In the circumstances, this Court declines to exercise its discretion in favour of the Appellant. It follows that the application for the writs of *certiorari, prohibition, and mandamus* must fail on this ground alone.

13. I am also fortified in this approach by the following observations of Jayasuriya J. in ***Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Others***[3] ;

> *"A Petitioner who is seeking a relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine...Even if he is entitled to relief still the Court has a discretion to deny him relief having regard to his conduct, delay...all are valid impediments which stand against the grant of relief."*

14. The observations of Amerasinghe J. in ***Seneviratne v. Tissa Dias Bandaranayake and Another***[4] and of Siva Selliah J. in ***Sarath Hulangamuwa v. Siriwardene, Principal of Vishaka Vidyalaya***[5] are also to the same effect and further support the refusal of discretionary relief in the present circumstances.

The Applicability of the Engineering Trade Wages Board to the Plywood Industry

15. Although the foregoing considerations are sufficient to dispose of this appeal, I consider it necessary and appropriate to also address the substantive question of law, namely, *whether the Wages Board decision for the engineering trade can be applied to the employees of the plywood industry?* This is a question upon which both the Appellant and the Respondents have addressed this Court at some length.

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[3] 1996 2 Sri.L.R 70
[4] 1992 2 SLR 341
[5] 1986 1 SLR 275

16. The principal contention of the Appellant is that the plywood manufacturing industry bears no relationship whatsoever to the engineering trade; that the four branches of engineering, namely, civil engineering, mechanical engineering, electrical engineering, and radio and electronic engineering, are all complicated and intricate areas requiring academic knowledge; and that the manufacture of plywood sheets, by contrast, is a simple process that does not require engineering acumen or specialized skills, being, in the Appellant's submission, virtually similar to the carpentry industry. The Appellant further contended that the category of "Machinists (wood working)" under the engineering trade cannot and should not be used to cover employees in the plywood manufacturing industry, and that a separate Wages Board ought to have been established for the plywood industry under Section 8(1)(b) of the Wages Board Ordinance.

17. The Gazette Extraordinary No. 1494/16 dated 25 April 2007, marked "E", classifies the Engineering Industry into four separate branches, namely, Civil Engineering, Mechanical Engineering, Electrical Engineering, and Radio and Electronic Engineering. The Wages Board is applicable to these four branches and to other activities incidental and/or connected to the said four branches. Crucially, the Wages Board for the engineering trade, as published in the Gazette of the Republic of Sri Lanka under No. 77 of 14 September 1973 and which came into force on 15 September 1973, has given a description of trade that encompasses nearly 41 categories, including the specific category of "Machinists (woodworking)". The engineering trade accordingly covers not only the four principal branches but also any other activity connected with or incidental to the 79 work categories enumerated thereunder.

18. The Court of Appeal, in its judgment dated 20 February 2013, examined these very contentions and rejected them. The Court of Appeal set out in detail the manufacturing processes involved in the plywood industry: timber logs are floated along the Gin Ganga for softening; if the logs are hard, they are softened by means of

a boiler machine; thereafter, all processes leading to the finished product of plywood sheets involve machines, including peeling of wood by means of a peeler machine, rolling by means of bobbing machines, clipping by means of a clipping machine, drying of soaked wood by means of a drying machine, seasoning by means of a seasoning machine, pasting together of plywood sheets by means of a gum-spreading machine, and pressing together of the plywood sheets by means of a pressing machine. The Court of Appeal concluded from these processes that the employees of the plywood manufacturing industry fall into the category of machinists for wood work under the engineering trade, and that accordingly the application of the wages prescribed in the engineering trade can be made applicable for the workmen working in the plywood industry.

19. I agree entirely with this analysis and conclusion. The determining criterion under the Wages Board Ordinance is not the label or name of the industry or trade in which an employee works, but the type and nature of the work the particular workman is engaged in. It is that character and quality of the work that is relevant for the determination of the applicable Wages Board under which a workman should be classified for the prescription of wages. In the present case, the overwhelming majority of the processes involved in the manufacture of plywood sheets are machine-operated processes. The workmen engaged in those processes fall squarely within the description of "Machinists (woodworking)" under the engineering trade.

20. The Appellant placed reliance on the decision of the Court of Appeal in ***Superintendent of Siri Kadura Estate and Another v. Lanka Estate Workers Union***[6], in which it was held that a workman employed as a mason and a carpenter on a rubber estate cannot claim the wages prescribed for the Construction Trade and should be covered by the wages board decision for the Rubber Growing and

[6] 1994 2 Sri.L.R 123

Manufacturing Trade. The ratio of that case is that when there is a separate wages board established for a particular trade, the mere fact that the work engaged in by workmen classified under another trade is akin or similar to the work for which a separate wages board is established shall not per se lead to the classification of such workmen as belonging to the other wages board. One must look not only at the nature and type of the work in isolation, but at the context in which those works are performed and their relevance to the main trade of the employer. In the ***Siri Kadura case***, the masonry and carpentry work were incidental work connected to the rubber growing and manufacturing trade and the maintenance of the estate buildings, not primary industrial activity in the construction trade.

21. The present case is materially different. The machine-operated processes that constitute the manufacture of plywood are not incidental activities tacked onto some other primary industrial activity. They are themselves the primary industrial activity of the Appellant company. Those processes fall squarely and directly within the description of "Machinists (woodworking)" under the engineering trade. There is no separate wages board established for the plywood manufacturing industry, nor has any notification under Section 8(1)(b) of the Wages Board Ordinance been published to extend any other wages board specifically to the plywood industry. In those circumstances, the engineering trade Wages Board is correctly and lawfully applicable to the workmen of the Appellant company.

22. The decision of this Court in ***Ceylon Petroleum Corporation v. Weerakoon and Another***[7] is not of assistance to the Appellant. In that case, this Court held that the personnel of a special security force established at Sapugaskanda to cater to a national exigency situation as part of the contingency plan of the oil refinery in the event of a terrorist attack could not be paid the wages prescribed for the normal

[7] 1995 1 Sri.L.R 415

security service trade, because the type and nature of the work they performed was fundamentally different, their terms and conditions of service (including 24-hour on-call duty) were entirely different, and the application of the wages of a trade which had prescribed normal working hours to such personnel would have challenged the validity of the very establishment of that special security force. The uniqueness of the terms and conditions under which those special security personnel worked distinguished them from the ordinary security service trade. No such uniqueness is established by the Appellant in the present case. The Appellant has not demonstrated how and in what manner the work performed by the workmen in the plywood manufacturing industry fundamentally differs from the description of "Machinists (woodworking)" under the engineering trade. On the contrary, the factual matrix, as found by the Court of Appeal, establishes precisely the opposite.

23. The Appellant also argued that since the plywood industry and the Appellant's predecessors had been carrying on operations since 1958, and since the Wages Board for the engineering trade had been in existence since 1945, the fact that for almost half a century the workmen in the plywood industry had never been categorized as falling within the engineering trade establishes that the plywood industry is a separate industry. This argument, though superficially attractive, does not withstand scrutiny. The question of whether a Wages Board determination has been applied or enforced in relation to any particular employer is a matter of practical implementation contingent on inspections and petitions. The fact that it has not been enforced does not mean it was not lawfully applicable. Moreover, as has been correctly submitted by Senior State Counsel F. Razik in his written submissions, an entity that has not been inspected by the relevant Labour Officer or in relation to which no petition has been submitted to the relevant Labour Office cannot avail itself of the defence that a Wages Board is not applicable to it on the ground that it had never previously been the subject of such enforcement.

24. In any event, the Appellant cannot invoke this argument with any force, given that, as is apparent from the document marked "R2" annexed to the Respondents' affidavit and objections, the Appellant had, by its own letter, acknowledged in writing that its workmen are covered by the engineering trade Wages Board. Up to the point of filing the petition in the Court of Appeal, the Appellant admitted that its relevant workers were covered by the Wages Board for the engineering trade. It was for the first time by that Court of Appeal petition that the Appellant took up the position that the plywood trade is not covered by the engineering trade Wages Ordinance.

25. Turning to the two questions of law on which special leave was granted. **First question:** Did the Commissioner of Labour have the power to extend, by the notice marked "F" dated 30 September 2008, the provision relating to the Wages Board determinations in respect of the "engineering trade" to employees in the plywood industry?

26. I opine that this question must be answered against the Appellant. The notice "F" did not purport to extend the Engineering Trade Wages Board to the plywood industry by way of a legislative or ministerial act under Section 8(1)(b) of the Wages Board Ordinance. Rather, it reflected the determination, pursuant to Section 46(3) of the Wages Board Ordinance, that the existing Engineering Trade Wages Board, which had been in operation since 1941 and which includes the category of "Machinists (woodworking)", was applicable to the 157 workmen of the Appellant company by reason of the nature of the work they perform. The Wages Board for the Engineering Trade extends to any other activity connected with or incidental to the enumerated categories of work. The Respondents were therefore entitled to determine that the workmen of the Appellant company fall within the ambit of that Wages Board, and the notice "F" was lawfully issued.

27. Section 64 of the Wages Board Ordinance defines "trade" widely to include any industry, business, undertaking, occupation, profession, or calling carried out, performed, or exercised by an employer or worker, as well as any branch of, or any function or process in, any trade. The Wages Boards established under the Ordinance are accordingly of wide application. The purpose of that breadth is to ensure that workmen are paid at least the minimum wage set out in the relevant gazette, thereby preventing the exploitation of workers by employers who would otherwise pay them a low wage.

28. The Appellant contended that only the Minister of Labour has the authority to extend a Wages Board to another trade, and that this must be done in accordance with Section 8(1)(b) of the Wages Board Ordinance with the prior notification procedure prescribed in Section 8(2). This argument proceeds on a misunderstanding of the nature of the decision made. The decision marked "F" was not an extension of the Engineering Trade Wages Board to a new trade. It was a determination that the workmen of the Appellant company, by reason of the character of their work, already fell within the existing scope of the Engineering Trade Wages Board. No ministerial order under Section 8(1)(b) was required for that determination.

29. **Second question:** Did the Commissioner of Labour, in any event, have the power to apply the order marked "F" retrospectively to dates prior to the date of the said order? This question too must be answered against the Appellant, given the factual matrix of this case and the applicable provisions of the Wages Board Ordinance. The notice "F" computed the amount to be recovered based on the gazette that revised the minimum wage for the category of "Machinist (wood working)" under the Wages Board for the Engineering Trade. The minimum wage obligation arises by operation of the Wages Board decision and the applicable gazette notification, not by the notice "F" itself. Section 21 of the Wages Board Ordinance provides that where a decision of a Wages Board whereby a minimum rate of wages for any trade is determined has

come into force, every employer shall pay every worker to whom such minimum rate is applicable wages at not less than such minimum rate. The obligation to pay the prescribed minimum wage is therefore statutory in character and arises from the coming into force of the relevant Wages Board decision. The notice "F" reflected and gave effect to that pre-existing statutory obligation. The amount claimed represented the wages deficit accumulated during the period between 01 May 2007 and 30 November 2007, a period during which the Appellant was already, by operation of law, obliged to pay the minimum wage. In those circumstances, the second question of law must also be answered against the Appellant.

30. In relation to the prayer for a writ of *mandamus* to direct the Respondents to withdraw the prosecution in case No. 26114 in the Magistrate's Court of Galle, this prayer is, in addition to failing for the reasons already stated, legally misconceived. A writ of *mandamus* can be issued only to direct a public officer to perform a positive act. A direction to withdraw an action already filed in another judicial forum amounts to a negative act and an undoing of an act already done, which falls outside the proper scope of *mandamus*. Furthermore, the steps taken by the Respondents in prosecuting the Appellant in the Magistrate's Court for non-compliance with the decision marked "F" are lawful acts. No writ of *mandamus* can properly lie in such circumstances.

31. For all the reasons set out above, my holding in this appeal would be as follows; The Appellant, having admitted liability and having undertaken to pay the wages specified in the amended certificate before the Magistrate's Court of Galle, cannot now seek to invoke the jurisdiction of this Court to quash the very decision on which that liability was founded. The Appellant is estopped from challenging the decision marked "F" and is guilty of laches. The remedies of *certiorari, prohibition, and mandamus* are discretionary remedies, and this Court declines to exercise its discretion in favour of the Appellant. The Appellant cannot invoke any alleged procedural deficiencies in Sections 6, 7, and 8 of the Wages Board Ordinance in

support of its argument, which represents a belated attempt to justify an application that is, on all the facts of this case, frivolous. On the merits also, the employees of the Appellant company in the plywood manufacturing industry fall within the category of "Machinists (woodworking)" under the Engineering Trade Wages Board. The Court of Appeal was correct in so holding. Both questions of law on which special leave was granted are accordingly answered against the Appellant. I affirm the judgment of the Court of Appeal dated 20 February 2013 and dismiss this appeal with costs.

Judge of the Supreme Court

Arjuna Obeyesekere, J. **Judge of the Supreme Court**

I agree.

K. Priyantha Fernando, J. **Judge of the Supreme Court**

I agree.