

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

In the matter of an application for Revision in  
terms of Article 154(P) of the Constitution, read  
with the High Court of the Province (Special  
Provisions) Act No. 19 of 1990

Galabada Dewage Pushpa Shyamalie Ekanayake,  
Mandadiyawatta,  
Bombuwala,  
Kalutara South.

**Intervient Petitioner-Appellant**

Court of Appeal Case No:  
**CA (PHC) 204/2014**  
HC Colombo Case No:  
**HCRA/12/2014**  
MC Colombo Case No:  
**97656/5**

-Vs-

Board of Management of Zahira College Colombo,  
Maradana Road,  
Colombo 10.

**Defendant-Petitioner-Respondent**

Deputy Commissioner of Labour,  
Department of Labour,  
Colombo 05.

**Claimant-Respondent-Respondent**

**Before :** A.L. Shiran Gooneratne J.

**&**

**Mahinda Samayawardhena J.**

**Counsel :** Athula Perera with Dinithi Wijesinghe for the  
Intervient-Petitioner-Appellant.

Sumedha Mahawanniarachchi with Nishan Balasooriya  
for the Defendant-Petitioner-Respondent.

Avanthi Weerakoon, SC for Claimant-Respondent-  
Respondent.

**Written Submissions:** By the Defendant-Petitioner-Respondent on 14/09/2018

By the Intervient Petitioner-Appellant on 27/09/2018

By the Claimant-Respondent-Respondent on 13/06/2019

**Argued on :** 23/10/2019

**Judgment on :** 22/11/2019

**A.L. Shiran Gooneratne J.**

On a certificate of enforcement issued in terms of Section 8(1) of the Payment of Gratuity Act No. 12 of 1983, the Claimant-Respondent-Respondent (hereinafter referred to as the 2<sup>nd</sup> Respondent) instituted action against the Defendant-Petitioner-Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent), in the Magistrates Court of Colombo. After inquiry, the learned Magistrate made order to recover the sum due referred to in the said certificate as a fine. Being

aggrieved, the 1<sup>st</sup> Respondent invoked the jurisdiction of the Provincial High Court of the Western Province holden in Colombo to set aside the said order. At the stage of proceedings, the 2<sup>nd</sup> Respondent informed the High Court that he would not enforce the said certificate since the intervenient Petitioner-Appellant (hereinafter referred to as the Appellant) is not entitled to the payment of gratuity by the 1<sup>st</sup> Respondent. On the strength of the said submission, the learned High Court Judge made impugned order dated 04/12/2014, preventing the enforcement of the said order made by the learned Magistrate. An application filed by the Appellant to intervene in the said proceedings was also not considered.

The Appellant is before this Court, *inter-alia*, to set aside the said order dated 04/12/2014, of the learned High Court Judge and affirm the order dated 22/11/2013 of the learned Magistrate or in the alternative to direct the learned High Court Judge to add the Appellant as a party to the revision application and to consider the action on its merits.

The State Counsel appearing for the 2<sup>nd</sup> Respondent submitted to Court that certain documents, which were brought to the notice of the 1<sup>st</sup> Respondent subsequent to the inquiry held in the Magistrates Court revealed that the Appellant's salary is paid through the consolidated fund and therefore, the Appellant should be considered as a government teacher and as such would not be entitled to the benefits under the said Act. The said documents have been tendered to Court by motion dated 16/09/2014 and 28/10/2014, marked X1 to X8 and Y1

and Y2, respectively. The Appellant's contention is that by not considering the documents filed by the 1<sup>st</sup> Respondent, the impugned order has caused a miscarriage of justice.

By the impugned order dated 04/12/2014, the learned High Court Judge prevented the enforcement of the order of the learned Magistrate and did not consider the application of the Appellant for intervention. However, the said order was made subject to the rights of the Appellant to make representations before the 2<sup>nd</sup> Respondent for non-enforcement of the certificate. It is important to note that the impugned order does not go into the validity of the certificate, which is possible in proceedings before the High Court. The validity of the certificate filed in the Magistrates Court was not in dispute.

It is submitted that the Appellant's salary was paid by the Government through the 1<sup>st</sup> Respondent and therefore is entitled to the payment of gratuity. However, the 1<sup>st</sup> Respondent while relying on documents marked 'Y1' and 'Y2' (at pages 157 & 158 of the brief) urged that, the Appellant's salary was paid through the Consolidated Fund of the Government and therefore, the Appellant should be considered as a Government teacher and would not be entitled to such payment.

The Appellant further submits that the documents marked 'B1' and 'B2', filed before this Court, on behalf of the Secretary Ministry of Education, clearly

shows that the Government had no intention of considering the Appellant as a Government teacher.

The Appellant was recruited as a teacher by the 1<sup>st</sup> Respondent and was under the authority of a manager. It is submitted that the services of the Appellant was not transferable unlike government teachers. Therefore, except for the payment of salary, and certain other supervisory powers, the government had no authority over the Appellant. The Counsel for the Appellant has drawn attention to Sections 5 and Section 7(b) of the Act and to several decided cases in support of his contention. Further the Appellant has annexed documents marked A1 to A4, B1 to B2, C and D in support, annexed to the written submissions filed of record. It is observed that the said documents were not before the learned High Court Judge at the time the impugned order was made.

The application made before this Court has sought to revise the order given by the learned High Court Judge and to give effect to the order of the learned Magistrate, taking into consideration the documents tendered to this Court. The said documents were not privy to the learned High Court Judge when making the impugned order. Therefore, if this Court proceeds to make an order on the strength of the documents filed at this stage, there is a strong likelihood that this Court would be infringing upon the procedural rights of an aggrieved party to challenge such order.

The documents filed by the Appellant in this Court, in my view, would attract the indulgence of the High Court to visit the merits of this case in order to consider the application for intervention.

Therefore, I set aside the impugned order of the learned High Court Judge and direct that the Appellant be permitted to intervene in the application before the High Court and the case to be decided on its merits.

Parties in PHC-0201-14 have agreed to abide by the judgment in this case.

Application allowed. I make no order for costs.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**