

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

Court of Appeal Case No.
CA/PHC/APN/123/2019
High Court of Colombo
Case No. HCRA 101/2019
MC Case No. 21194/5

In the matter of an Appeal in terms of
Article 138 and 154P (3)(b) of the
Constitution and Section 11 of the High
Court of the Provinces (Special
Provisions) Act, No.19 of 1990 read
together with Section 320 (2) of the
Criminal Procedure Code.

Assistant Commissioner of Labour,
(Colombo West),
Labour Department,
Colombo 05.

Plaintiff

Vs.

1. Jathika Yudha Wirodee Peramuna,
146/20, Havelock Road,
Colombo 05.

And its Successor

Prayathna Janatha Wayaparaya,
No.46, Jawatta Road,
Colombo 05.

2. Dr. Kumara Rupasinghe,
(Director - Prayantha Janatha
Wayaparaya)
124/2, Buddhist Institute Road,
Parliament Road,
Battaramulla.
3. Mahamarakkalage Anura Lasantha
Perera,
(Director - Prayantha Janatha
Wayaparaya)
16/2, Primrose Road,
Kandy.
4. Dr. Sunil Earnest Wijesiriwardena,
(Director - Prayantha Janatha
Wayaparaya)
76, Colombathanthri Mawatha,
Ethul Kotte.
5. Victor Ivan,
(Director - Prayantha Janatha
Wayaparaya)
Piliyandala Road,
Maharagama.
6. Sigamunipurage Hemawathi
(Director - Prayantha Janatha
Wayaparaya)

74, Kirulapone,

Colombo 06.

7. Mathara Pallimuluge Premasiri

Perera,

(Director - Prayantha Janatha

Wayaparaya)

G/1/1, Elvitigala Housing Scheme,

Colombo 08.

8. Nanderi Keli Magilian Senanayake,

(Director - Prayantha Janatha

Wayaparaya)

121, Modara Road,

Egoda Uyana,

Moratuwa.

9. Sathiweli Balakrishnan,

(Director - Prayantha Janatha

Wayaparaya)

12/1/1, Sujatha Mawatha,

Kalubowila,

Dehiwela.

10. Malani Samarasinghe,

(Director - Prayantha Janatha

Wayaparaya)

489/18, Matara Road,

Pelena, Weligama.

11. Kithsiri Wijesuriya,
(Director - Prayantha Janatha
Wayaparaya)
6/220, Galwala Road,
Dehiwela.

12. Welalagodage Mithrarathne,
(Director - Prayantha Janatha
Wayaparaya)
37, Nikape Road,
Dehiwela.

Accused

And Between

Assistant Commissioner of Labour,
(Colombo West),
Labour Department,
Colombo 05.

Plaintiff-Petitioner

Vs

01. Jathika Yudha Wirodee Peramuna,
146/20, Havelock Road,
Colombo 05.

And its Successor

Prayathna Janatha Wayaparaya,

No.46, Jawatta Road,

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02. Dr. Kumara Rupasinghe,

(Director - Prayantha Janatha

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03. Mahamarakkalage Anura Lasantha

Perera,

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04. Dr. Sunil Earnest Wijesiriwardena,

(Director - Prayantha Janatha

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05. Victor Ivan,

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09. Sathiweli Balakrishnan,

(Director - Prayantha Janatha

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Dehiwela.

12. Welalagodage Mithrarathne,

(Director - Prayantha Janatha

Wayaparaya)

37, Nikape Road,

Dehiwela.

Accused-Respondents

And now Between

Attorney General,

Attorney General's Department,

Colombo 12.

Appellant

Assistant Commissioner of Labour,

(Colombo-West),

Labour Department,

Colombo 05.

Plaintiff-Petitioner-Appellant

Vs

01. Jathika Yudha Wirodee

Peramuna,

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Lasantha Perera,

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G/1/1, Elvitigala Housing

Scheme,

Colombo 08.

08. Nanderi Keli Magilian

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09. Sathiweli Balakrishnan,
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Dehiwela.

12. Welalagodage Mithrarathne,
(Director - Prayantha Janatha
Wayaparaya)
37, Nikape Road,
Dehiwela.

Accused-Respondent-Respondents

Before: Prasantha De Silva, J.

S.U.B Karalliyadde, J.

Counsel: Mrs. Yuresha Fernando S.S.C with R. Gooneratne S.C for the Plaintiff-Petitioner-Appellant.

Mr. Moditha T.B Ekanayake A.A.L for the Accused-Respondent-Respondent.

Written Submissions

tendered on: 04.03.2020 by the Plaintiff-Petitioner-Appellant.
19.10.2020 by the Accused-Respondent-Respondents.

Argued on: 03.02.2021 and 10.02.2021.

Decided on: 16.07.2021.

Prasantha De Silva, J.

Order

This is an application in revision that emanates from the Order of the Learned High Court Judge of the Provincial High Court of the Western Province holden in Colombo, dismissing the application of the Plaintiff-Petitioner on 18.09.2019 even without issuing Notice on the Accused Respondent-Respondents.

The Plaintiff instituted an action bearing No. 21194/5 in the Magistrate's Court of Colombo under Sections 40 (1) (Q), 43 (4) & 43 (1) of the Industrial Disputes Act, No. 25 of 1956 (as amended) against the Accused on the following charges.

1. Respondents have failed to comply with an Order of the Labour Tribunal dated 29.01.2014 in Case bearing No. 13/225/2011 by failing to make payment of Rs. 543, 750/- awarded as compensation to an employee named Madurapperuma Arachchige Weerarathne who was employed under the Respondents.
2. Commit the offence under Section 40 (1) (Q) read with Section 43 (4) and 43 (1) of the Industrial Disputed Act, No. 25 of 1956 (as amended).

On behalf of the Accused, a preliminary objection was raised before the Magistrate that the Plaintiff filed by the Plaintiff cannot be maintained and the Accused be discharged from the proceedings. Consequently the Learned Magistrate overruled the said preliminary objection and directed to commence the trial based on the said charges levelled against the Accused.

It appears that at the end of the trial, the Learned Magistrate by Order dated 29.11.2018 acquitted all the Accused on the basis that the charges were not proved beyond reasonable doubt and that the proper employer who is liable for the payment was not established.

Being aggrieved by the said Order, the Plaintiff-Petitioner invoked the Revisionary Jurisdiction of the Provincial High Court of Colombo seeking to revise the said Order of the Magistrate on the grounds urged by the Plaintiff-Petitioner in the Revision Application to the High Court.

However, the Learned High Court Judge dismissed the Application of the Plaintiff-Petitioner in the first instance. The Plaintiff-Petitioner-Appellant [hereinafter sometimes referred to as the Plaintiff-Petitioner] invoked the Revisionary Jurisdiction of this Court and moved to set aside the Orders made by the Learned Magistrate on 29.11.2018 and the Learned High Court Judge dated 18.09.2019.

It appears that the Learned High Court Judge dismissed the application of the Plaintiff-Petitioner by Order dated 18.09.2019.

However, the Plaintiff-Petitioner has invoked the Revisionary Jurisdiction of the Court on the following grounds;

- a. The Learned Magistrate has erred in Law by determining that as to how “Prayathna Janatha Wayaparaya” became the successor of “Yudha Weerodee Peramuna” has not been established by evidence.
- b. The Learned Magistrate has erroneously considered by deciding that the Labour Tribunal Order does not specify as to which employer should be liable to comply with the Order.
- c. The Learned Magistrate has erred in Law by concluding that the 1st Respondent institutes, are two different entities and that it is not established that the former employer succeeds the subsequent employer when directors who were directors under both institutions were also named as Accused.
- d. The Learned Magistrate has erred in Law by arriving at a wrong conclusion that the Order of the Labour Tribunal has not been referred to the Labour Tribunal again to ascertain who the employer was.
- e. The Learned Magistrate has erred in Law by holding that charges framed against the Respondents have not been proved beyond reasonable doubt.

However, it was submitted on behalf of the Plaintiff-Petitioner that reasons were emphasized for the failure to file an Appeal and delay in filing the Revision Application against the Order marked as P1[X₆] to the Petition.

Apparently, the fact that once the Order dated 29.11.2018 marked as P1[X₆] was delivered by the Learned Magistrate, the Commissioner of Labour as per the powers vested with him, held an independent inquiry in order to satisfy himself that the Respondents who were named in the charge sheet were the employers of the employee, which resulted to delay to prefer the Appeal within the prescribed period. In this instance, it was urged by the Plaintiff that in such a situation Revisionary Jurisdiction can be invoked on the ground of exceptional circumstances and/or miscarriage of justice.

In this respect, it was cited the case of **Jayasekere Liyanarachchi Vs. Chandana Pushpakumara and others [C.A/RI/343/2015 – C.A Minutes 11.12.2018]** held that “belated application for revision to Court of Appeal was justified in view of meeting out Justice to revise an illegal order being made by the lower Court”.

It was emphasized in the case of **Chandragupta Vs. Gunadasa Suwadaratne [C.A.L.A 508/2005 - C.A Minutes of 12.09.2017]**, it is axiomatic that the Revisionary Jurisdiction of this Court is available to rectify the manifest error of perversity.

In **Sinnathangam Vs. Meeramohideen [60 N.L.R 394]** *T.S Fernanda J.* (with *Weerasooriya J.* agreeing) opined that the Court possesses the power to set right in revision an erroneous decision in an appropriate case even though an Appeal has abated on the ground of non-compliance with technical requirements.

The said case was followed by *Jayawickrama J.* (with *De Silva J.* agreeing) in **Soysa Vs Silva and others [2000 (2) S.L.R 235]** and considered the case of a Revision Application that had been filed in the Court of Appeal 10 years after the pronouncement of the Judgment in the District Court.

In the case of **Don Chandra Maximus Illangakoon Vs Officer-In-Charge of Police Station, Anuradhapura and another [CA (PHC) 28/2009]** decided in Court of Appeal and the important excerpts in the said Judgment are as follows;

Moreover, it is trite Law that the delay in coming to Court is not the sole criteria to dismiss a Revision Application, if the Petitioner is in a position to explain the delay. In this instance, the delay is due to the failure to file the Appeal at the appropriate stage in the original action. Therefore, it is clear that the Petitioner has successfully explained the delay in filing the Revision Application.

*In the case of **Rustom V. Hapangama [1978-1979 (2) SLR 225]** it was held that, " Even when an Appeal was taken but was abated on technical grounds, the Supreme Court has granted relief by way of Revision, as not to do so would be a denial of justice".*

In view of the submissions made on behalf of the Plaintiff and the rational basis of the aforesaid Judgments, it is apparent that the Plaintiff has established and justified the failure to prefer an Appeal against the Judgment of the Magistrate's Court and the delay of filing the Application for Revision.

In these circumstances, it is the duty cast on the Learned High Court Judge to look at the merits of the case *Prima facie*, since the Plaintiff-Petitioner justified his failure to prefer an Appeal and also explained the delay of invoking the Revisionary Jurisdiction of the

Provincial High Court of Colombo, which clearly manifests that it is a duty cast on the Learned High Court Judge to look into the matter, whether the Plaintiff has a *Prima facie* sustainable Case, without dismissing the application in the first instance even without issuing notice on the Respondents. Thus, we set aside the Order of the Learned High Court Judge dated 18.09.2019.

Apparently, the Plaintiff-Petitioner-Appellant (Petitioner) has prayed in the Petition to set aside the Order dated 29.11.2018 by the Learned Magistrate.

When this matter was taken up for argument, both Counsels for the Plaintiff-Petitioner as well as the Accused-Respondents made Submissions relating to the merits of the Case and has already filed Written Submissions in this regard.

It appears that the Plaintiff-Petitioner invoked the Jurisdiction of the Magistrate's Court against the Accused-Respondents for failing to comply with an Order of the Labour Tribunal in Case bearing No. 13/225/2011, upon failing to make payment of Rs. 543,750/- awarded as compensation to an employee named Madurapperuma Arachchige Weerathne, who was under the Accused-Respondents and thereby committing an offence in terms of Section 40 (1) Q read with Section 43 (4) and 43 (1) of the Industrial Disputes Act, No. 43 of 1950 (as amended).

However, the Learned Magistrate after the conclusion of the case, held that the employer who is liable to comply with the Order of the Labour Tribunal is not properly established, thus the Magistrate's Court cannot make an Order which is non-executable.

It is worthy to note that the Learned Magistrate is of the view that the Order of the Labour Tribunal does not specify as to which employer should be liable to comply with the Order.

When perusing the Order dated 29.01.2014 of the President of the Labour Tribunal, it clearly states that;

“නමන් 2005 ජූලි 01වන දින ඉහත නම සඳහන් ජාතික යුධ විරෝධී පෙරමුණේ ජාතික සංවිධායක තනතුරේ සේවයට බඳුනු බවත්, නමා වෙත පත්වීම් ලිපියත් ලබා නොදුන් බවත්, ජාතික යුධ විරෝධී පෙරමුණ පසුව ප්‍රයත්න ජනතා ව්‍යාපාරය වශයෙන් නාමය වෙනස් කරන ලද අතර, එකී ප්‍රයත්න ජනතා ව්‍යාපාරය 2008.12.04 දිනැති පත්වීමේ ලිපියක් මගින් එකී ව්‍යාපාරයේ ජාතික සංවිධාන/ජාතික සම්බන්ධීකරන තත්කුරට නමා පත් කර ගත් බවත්, එම තනතුරේ රාජකාරී කරමින් සිටිය දී 2009.01.22 දිනැති ලිපිය මගින් අනිවාර්ය නිවාඩු යැවීමක් සිදු කළ බවත්.....”

It is worthy to note that the employee-applicant was given a letter of appointment by the “Prayathna Janatha Wiyaparaya” and the employee-applicant was sent on compulsory leave by the employer “Prayathna Janatha Wiyaparaya” (Prayathna People’s Movement) by letter dated 22.01.2009 marked and produced as [A₂].

Furthermore, the employee-applicant was informed by letter dated 16.03.2011 [A₁₆] by the Chairman of the “Prayathna Janatha Wayaparaya” [Prayathna People’s Movement], that his services were terminated by the Board of Directors with effect from 08.04.2009.

Moreover, it is pertinent to note that the Learned President of the Labour Tribunal held that the employee-applicant's services were terminated by the Respondent is not Just and Equitable. Since the employee-applicant was not seeking a reinstatement, the President of the Labour Tribunal decided that he is entitled for compensation. It is noteworthy that no Appeal preferred against the said Order of the Labour Tribunal by the employer.

When calculating the award, Quantum of compensation, it is seen that the Learned President Labour Tribunal has considered the period from the date of sending the employee-applicant on compulsory leave by letter [A₂] and the letter [A₁₆] informing his services were terminated by the employer.

It is significant to note that the said letters [A₂] and [A₁₆] were signed by the General Secretary of the "Prayathna People's Movement" [ප්‍රයත්න ජනතා ව්‍යාපාරය] and the Chairman of the Prayathna People's Movement [ප්‍රයත්න ජනතා ව්‍යාපාරය] respectively.

As such, it is noteworthy that the Learned President of the Labour Tribunal referred to the Respondent as employer in his Order dated 29.01.2014, is the Accused-Respondents- Respondents named in the caption – 'Prayathna Janatha Wayaparaya' [Prayathna People's Movement]. Hence, it is crystal clear that the employer of the employee-applicant was "Prayathna People's Movement" [ප්‍රයත්න ජනතා ව්‍යාපාරය].

Since it clearly manifests that Prayathna Janatha Wayaparaya is the employer of the employee-applicant Madurapperuma Arachchige Weerasena. In such circumstances, Court need not to consider whether the Prayathna Janaya wayaparaya is a successor of the Jathika Yudha Wirodee Peramuna.

Therefore, it is apparent that the Learned Magistrate has misdirected himself and held against the Plaintiff on the basis that the Prosecution has not established the proper employer of the employee-applicant and acquitted the Accused-Respondent-Respondents.

As such, I hold that the Learned Magistrate has erred in Law and facts and had come to an erroneous conclusion that the charges against the Accused were not proved beyond reasonable doubt and acquitted the 3rd -12th Accused-Respondent-Respondents the Directors of the Prayathna Janatha Wiyapparaya (Prayathna People's Movement).

In view of the aforesaid reasons, it clearly demonstrates that there is a miscarriage of Justice, which caused a greater injustice to the employee-applicant, thus exceptional circumstance warrants the Plaintiff-Petitioner to invoke the Jurisdiction of the Provincial High Court of Colombo.

Thus, I set aside the Order of the Learned High Court Judge dated 29.11.2018 and also the Judgment of the Learned Magistrate dated 29.11.2018 and convict the 2nd -12th Accused-Respondent-Respondents for the 1st and the 2nd charges aforementioned. The said Accused-Respondent-Respondents are sentenced to pay a fine of Rs. 500 each and in default, six months simple imprisonment severally.

In addition to that sentence, I make an order that the 2nd -12th Accused-Respondent-Respondents should pay a sum of Rs. 543,750/- collectively as Ordered by the Labour Tribunal by Order dated 29.01.2014 within three months from the date of this Order. If the said sum of Rs. 543,750/- is not paid as Ordered by the Accused-Respondent-Respondents, it may be recovered as a fine and in default, six months simple imprisonment.

Hence, the Learned Magistrate is directed to implement the Order of the Labour Tribunal and impose the punishment.

The Registrar of the Court of Appeal is directed to send copies of this Order to the Labour Tribunal of Wattala, the Magistrate's Court of Colombo and the High Court of Colombo forthwith.

As such, I allow the application of the Plaintiff-Petitioner-Appellant with costs fixed at Rs. 25,000/- to be paid to the Plaintiff- Petitioner-Appellant by the Accused-Respondent-Respondents.

JUDGE OF THE COURT OF APPEAL

S.U.B Karalliyadde J.

I agree.

JUDGE OF THE COURT OF APPEAL