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

In the matter of an Application for mandates in the nature of Writs of *Certiorari*, *Mandamus* and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Srimal Jayasinghe,
Partner,
Jayasinghe Industries,
Kalutara Road, Welimanana,
Matugama.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/800/2024

1. Deputy Commissioner of Labour,
   (Western Zone 02),
   No. 131/2/1,
   Old Road,
   Kalutara South.

2. Assistant Commissioner of Labour,
   Department of Labour,
   Mathugama.

3. Commissioner of Labour (Labour Relations),
   No. 41, Kirula Road,
   Colombo 05.

4. Jayalath Abeynayake,
   No. 40, Gallage Mawatha,
   Mirihana.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Sumith Senanayake PC with Nisali Balachandra for the Petitioner. Kapila Suriyaarachchi with M.G.N. Sandamini for the 4th Respondent. Sachitha Fernando, S.C for the 1st to 3rd Respondents.
Supported on:	22.10.2025
Decided on:	08.12.2025

Mayadunne Corea, J

The Petitioner in this Writ Application has sought the following reliefs:

"*b) Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the 1st Respondent with regard by letter dated September 2024 marked as X6*

c) Issue a mandate by way of a mandate in the nature of a Writ of Certiorari, to call for and quash the purported decision of the 1st Respondent by letter dated September 2024 marked as X6 and/or any decision touching upon and/or referable to such a purported decision

d) Issue a mandate in the nature of a Writ of Mandamus compelling or directing 1st Respondent to do a proper inquiry after analyzing all the documents related to the above matter

e) Issue a mandate in the nature of a Writ of Prohibition prohibiting the 1st Respondent and/or any other Respondents and/or any person(s) seeking to act under or through them from purporting to act in pursuance of the purported letter dated September 2024 marked as X6"

The facts of the case briefly are as follows. The Petitioner alleges that the 4th Respondent has lodged a complaint with the Department of Labour against the Petitioner stating that he was an employee of Jayasinghe Industries, which is a partnership in which the Petitioner is also a partner. The 4th Respondent had based his complaint on the basis that he has not been paid his EPF and ETF. Subsequent to the complaint, there had been an inquiry which had been concluded with written submissions. The inquiring officer had made an order stating that the Petitioner is liable to pay the EPF to the 4th Respondent and on receiving a notice to pay the EPF in arrears and the surcharge. Aggrieved by the said decision, the Petitioner has filed this Writ Application.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The Petitioner contends that the evidence presented has not been considered.
- No fair hearing has been afforded to the Petitioner.

The Respondent's contention

The Respondents raised the following objections:

- The Respondents denying the same, submitted that the Petitioner has failed to tender any documentary evidence.
- A fair hearing has been afforded and an inquiry that culminated in X6 had commenced in the year 2019 and concluded only in 2024.
- The Petitioner has not pleaded any grounds to obtain the relief prayed for.
- The Petitioner has suppressed or misrepresented facts.
- The Petitioner is guilty of laches.

Analysis

To understand the issue before me, let me first consider the background that culminated in this Application. The Petitioner contends that the 4th Respondent had filed an application before the Labour Tribunal in the year 2018, alleging that he had been compelled to tender

a letter of resignation from the post of General Manager and had prayed for the arrears in salary. The summons issued by the Labour Tribunal had been marked and tendered as X1 and the application to the Labour Tribunal had been marked as X1a. The said application is dated 10.07.2018. It is observed that in the said application, the applicant had pleaded that he had earned a salary of Rs. 400,000/- per month in the capacity of General Manager. Further, in the said application, the 4th Respondent had alleged that he had been compelled to submit a letter of resignation from the company and therefore, has sought for reinstatement with arrears in salary. The Petitioner, while denying the said contention submits that the 4th Respondent was never an employee of the partnership against whom the complaint is made.

Thereafter, the 4th Respondent had withdrawn the said application on 19.07.2018. The said application has been made against three partners of the partnership in which the Petitioner is also a partner. Thereafter, the 4th Respondent lodged a complaint with the 2nd Respondent on 20.11.2019. Even though the Petitioner did not make submissions on the ground of estoppel, the Court observes that the Petitioner had pleaded that the 4th Respondent is estopped from subsequently lodging a complaint with the 2nd Respondent as he had sought the same reliefs from the Labour Tribunal and has withdrawn the said application. However, this Court observes that as per X3, the complaint made against the Jayasinghe Industries, the partnership, is for non-payment of EPF, while in the application filed before the Labour Tribunal, the 4th Respondent, had canvassed his termination and had sought for arrears in wages. Hence, the two applications filed in two different entities (the Labour Tribunal and the Assistant Commissioner of Labour) are different in nature. Therefore, the Petitioner's objection based on estoppel cannot be sustained.

Background to the inquiry

As per the document marked X3, the complaint to the Commissioner of Labour had been made by the letter dated 20.11.2019 and the inquiry had been fixed for 18.12.2019. It is pertinent to note that by this document X3, the Petitioner has been asked to bring the employee attendance register, name register containing the employee identity card particulars and the document pertaining to the payment of salaries. It is the contention of the Petitioner that the inquiry had been fixed on many occasions and finally fixed for inquiry on 20.05.2024. The notice sent to the Petitioner is marked as X4. The learned State Counsel appearing for the 1st to 3rd Respondents submitted that the inquiry that commenced in 2019 had not concluded until 2024 mainly due to the Petitioner not being present. This allegation was promptly refuted by the learned President's Counsel for the

Petitioner. However, it is pertinent to observe that as per the document marked as X4, there is a note to state that both parties should be present for the inquiry to enable the Commissioner to come to a conclusion. This substantiates the learned State Counsel's contention that the complaint could not be investigated and concluded due to the absence of one party until 2024. Be it as it may, it is common ground that both parties had been present on 20.05.2024 and subsequent to that both parties had been asked to file their written submissions. It is common ground that the Petitioner had agreed to conclude the inquiry by filing the written submissions. The Petitioner submits that he has tendered his written submission which was marked before this Court as X5.

Impugned order

The 1st Respondent had issued its order marked as X6 and the Petitioner submits, though it is not pleaded in the Petition, that the said decision contained in X6 is illegal as it had not considered the evidence and had not given an opportunity for the Petitioner to be heard. Subsequent to the order marked as X6, the Petitioner's Attorney-at-Law had sent a letter dated 09.10.2024 asking the Petitioner to be given an opportunity to produce evidence and also stating that they intend to file a Writ Application against the Respondents. The impugned order under paragraph 2 gives reasons of the inquiring officer in arriving at his decision, which states as follow:

> "2. …
>
> V. *සාමාන්‍යාධිකරී තනතුරෙන් මොහු ඉල්ලා අස්වන බවට 2018.06.12 දින ආයතනය වෙත ලබාදුන් ලිපිය ආයතනය පිළිගෙන තිබීම.*"

Hence, it is clear that the inquiring officer had come to his decision based on the said documents. The learned Counsel for the 4th Respondent in his submissions contended that the said document had been tendered to the inquiring officer by the 4th Respondent. This position is not contradicted by the Petitioner and is admitted by the learned State Counsel who appears for 1st to 3rd Respondents. Thus, it is established that the inquiring officer has come to his conclusion based on the documents submitted.

However, the Petitioner contends that the said documents are false and self-made. It is observed that this fact has been informed to the inquiring officer by the letter marked as X7. The learned President's Counsel for the Petitioner concedes that this letter had been submitted to the inquiring officer after he had delivered the order dated X6. Further, he

concedes that the said documents were not objected to nor its authenticity challenged before the inquiring officer before he delivered the order. Thus, it is clear that at the time the inquiring officer arrived at his decision marked X6 he had not received X7 and there was no challenge by the Petitioner pertaining to the documents the inquiring officer relied on in arriving at his decision. Thus, it can be concluded that X6 had been arrived at with the documents tendered and not challenged.

Did the inquiring officer fail to consider the evidence before him?

It is observed by Court that this ground is not pleaded in the Petition. Hence, the Respondents correctly submitted that this ground should not be considered by Court. However, even if I am to consider this ground, I find the Petitioner had been given an opportunity to present his evidence. His contention of the 4th Respondent not being an employee could have been clearly established if he had availed the opportunity given to him by X3. In the notice marked as X3, the Petitioner had been asked to produce documentary evidence of the attendance register, the names of employees register with the identity card numbers of the employees and the salary particulars of the employees. Upon being inquired by Court, the learned President's Counsel for the Petitioner conceded that the Petitioner had failed to submit the said documents.

Now I will consider the document marked as X5 which are the written submissions of the Petitioner. As per the written submissions, it is clear that when the Petitioner was noticed to appear before the inquiring officer, he knew the allegation before him. In any event, the ignorance of the charges or the complaint was not the Petitioner's case. It appears in the written submissions filed before the inquiring officer marked as X5 that on 09.09.2020 an inquiry had commenced and a recommendation had been given by the inquiring officer who conducted the inquiry. The Petitioner had been represented by an Attorney-at-Law, who had walked out of the inquiry after raising a preliminary objection and had requested the inquiry to be transferred to Kalutara office.

It is also pertinent to note that the learned Counsel appearing for the Respondents vehemently denied that the Petitioner tendered any documents at the inquiry. It is their contention that if the documents that had been tendered by the Respondents were fraudulent as alleged by the Petitioner, then the Petitioner should have challenged the said documents and proved that the said documents are fraudulent by evidence. This Court has considered the document marked as X7. It is evident that the Petitioner has attempted to tender

documents and to challenge the factual matters which the 4th Respondent has submitted only after the order marked as X6 had been made. A plain reading of X7 demonstrates that the Petitioner by the said document is seeking a fresh inquiry to produce the documentary evidence he has and also to impugn the documents the 4th Respondent had tendered which could have been done at the inquiry. Further, instead of agreeing to conclude the inquiry by written submissions the Petitioner could have made an application to lead evidence and produce documents.

Inquiry at the Kalutara office

The request of the Petitioner had been granted and the inquiry had been transferred to the Kalutara labour office. The Petitioner had received a notice seeking him to be present for an inquiry on 22.12.2020. As the inquiring officer was not a Deputy Commissioner but another officer, the Attorney-at-Law who appeared for the Petitioner once again had objected and not participated in the inquiry. Subsequently, the inquiry had been fixed for another date but as the inquiring officer had to attend a funeral, the inquiry had not commenced. As per the written submissions of the Petitioner, the inquiry had been postponed due to various grounds attributed to both parties until 20.05.2024. On the said date the inquiry had commenced. The Petitioner submits that on the said date both parties had presented their respective cases and as there was no settlement the parties had been allowed to file their written submissions.

As per the written submissions, the Petitioner concedes that the 4th Respondent had worked in the entity as an advisor. Further, in paragraph 6 of X5 it appears the Petitioner had recruited an employee too on the recommendation of the 4th Respondent.

However, it is evident that the Petitioner has failed to tender any documentary evidence to substantiate his position and it is evident through the written submission that none of the contentions raised there are substantiated with documentary evidence. Upon being asked by the Court, the learned President's Counsel conceded that no documents had been tendered before the inquiring officer. Hence, it is clear that the Petitioner has failed to substantiate any matters he has urged with documentary evidence.

It is also pertinent to note that even though the Petitioner alleges that the evidence tendered has not been considered by the inquiring officer, the Petitioner has failed to tender the

inquiry proceedings to this Court. In the absence of the proceedings, this Court is not in a position to ascertain what evidence was led that had not been considered or whether any evidence has been led at all. It is trite law that the burden of proof in a Writ Application lies with the Petitioner. In the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** **SC Appeal 10/2009 decided on 15.12.2014** the Supreme Court held,

> "*The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies*."

In considering the submissions and the documents tendered to this Court, in my view the Petitioner had been offered a fair hearing. Further, as per the Petitioner's own submissions he concedes that he has failed to tender any documentary evidence to substantiate his contentions at the inquiry before the decision marked X6 had been arrived at. Hence, in my view, the Petitioner's contention that his evidence was not considered has to fail.

It is also pertinent to note that what the Petitioner has pleaded before this Court are all factual matters which have to be ascertained through evidence. Especially in view of the denial of the said factual positions by the Respondents.

The grounds urged by the Petitioner for seeking a Writ

I have carefully considered the Petition of the Petitioner and I find that there are no grounds pleaded to obtain the relief the Petitioner is praying for. I cannot find any ground on which the Petitioner is impugning the decision marked as X6 pleaded in the Petition. In my view, the Petitioner has failed to plead that the decision marked as X6 is bad in law. It is not challenged on the grounds of being *ultra vires* or on unreasonableness. Hence, in the absence of any ground pleaded and any particular ground established, in my view, the Petitioner's Petition has to fail.

Necessary parties not before the Court

Respondent had alleged that he was employed and was not paid EPF by the partnership. The impugned order marked as X6 is made against the partners of the partnership.

However, the Petition is not filed by the partners of the partnership but only by a single partner. There is no material to demonstrate that the other partners had authorized the Petitioner to file this Writ Application on behalf of the partnership. Hence, in my view, the partners of the partnership against whom the impugned order X6 is made are necessary parties to this Application. The Petitioner has not pleaded any ground as to why he failed or omitted to make the other partners a party to this Application. It is trite law that failure to make necessary parties are fatal to a Writ Application. In coming to this conclusion, I am guided by ***Rawaya Publishers v. Wijedasa Rajapakse*** **(2001) 3 SLR 213** and ***Hatton National Bank PLC v. Commissioner General of Labour and others*** **CA Writ 457/2011 decided on 31.01.2020**.

Conclusion

I have considered the submissions made by all parties and have considered the pleadings and the marked documents tendered to this Court. In my view, for the above stated reasons the Petitioner has failed to establish a *prima facie* case that warrants the intervention of this Court. Hence, I refuse to grant formal notice and proceed to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal