IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for a mandate in the nature of a *Writ of Certiorari,* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 368/2018

Kusang Lanka (Pvt) Ltd,
Aniyakanda Estate,
Nagoda,
Kandana.

PETITIONER

Vs.

1. Commissioner General of Labour,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

2. B. R. Mahinda,
   Assistant Commissioner of Labour,
   District Labour Office,
   Jaela.

2A. K. L. D. V. Rathnakumara,
   Assistant Commissioner of Labour,
   District Labour Office,
   Jaela.

3. Deputy Commissioner of Labour,
   District Labour Office,
   Gampaha.

4. Hon Attorney General,
   Attorney General's Department,
   Colombo 12.

5. Kweon Byoung Hong,
   No. 52/3,
   Thaladuwa Road,
   Negambo.

RESPONDENTS

Before : Dhammika Ganepola, J.

Adithya Patabendige, J.

Counsel : Isuru Lakpura for the Petitioner instructed by K.K.N. Lochani Welagedara

P. Jayasuriya, S.C. for the 1st to 4th respondents.

Hashan Gunaratne for the 5th respondent.

Argued on : 21.11.2025

Written Submission Tendered on : 12.12.2025 by the Petitioner

Decided on : 18.02.2026

Adithya Patabendige, J.

The Petitioner, Kusang Lanka (Pvt) Ltd., is a company incorporated under the Companies Act No. 7 of 2007 and registered with the Greater Colombo Economic Commission, the predecessor of the Board of Investment. It is a subsidiary of Kusang Company Ltd., Korea.

The 5th Respondent, a Korean national, commenced employment with Kusang Company Ltd., Korea, in 1980 and continued until 1993. Thereafter, in January 1994, he accepted employment with the Petitioner Company in Sri Lanka. From January 1994 to September 2003, the 5th Respondent was paid a monthly salary of USD1,000. From October 2003 onwards, he was paid USD 2,500 per month. The Petitioner asserts that the remuneration of USD 2,500 comprised the following components.

- Basic - USD 750
- Housing - USD 550
- Incentive - USD 500
- Bonus - USD 400
- Gratuity - USD 300

Subsequently, the 5th Respondent resigned and re-joined the Petitioner as an independent contractor. According to the contract of employment marked as **P8**, he was paid an annual salary of USD 30,000.

The Petitioner states that the services of the 5th Respondent were terminated on disciplinary grounds with effect from 5th December 2012. Thereafter, the 5th Respondent lodged a complaint marked **P10,** with the Assistant Commissioner of Labour, Jaela, the 2nd Respondent, on 16th October 2013, seeking recovery of his statutory dues from the Petitioner.

Following an inquiry, the 2nd Respondent determined that a sum of Rs. 6,132,905.10 was payable by the Petitioner as EPF contributions. The determination was communicated to the Petitioner, and a final notice dated 12th December 2014, marked **P16,** was issued to the Petitioner to pay a sum of Rs. 6,132,905.10 to the 5th Respondent as his EPF entitlement. The Petitioner was further informed that, in the event of failure to pay the said amount, the case would be filed to recover it under Section 38(2) of the Act before the relevant Magistrates'

Court. Being aggrieved by the said decision, the Petitioner requested a fresh inquiry from the Commissioner General of Labour, the 1st Respondent marked **P16a.**

After an inquiry, the 2nd Respondent, by letter dated 12th December 2014, marked **P19** directed the Petitioner to pay the said sum. Since the Petitioner refrained from paying it, the 2nd Respondent filed a certificate dated 10th July 2016, in terms of Section 38(2) of the Employees Provident Fund Act No. 15 of 1958 (hereinafter referred to as the EPF Act), marked **P20,** before the Magistrates' Court of Negombo. By Order dated 16th November 2017, marked **P23**, the learned Magistrate dismissed the objections of the Petitioner and allowed the application to recover the aforesaid amount stipulated in **P20.**

Being dissatisfied with the decision, the Petitioner filed an appeal with the High Court of the Western Province, holden at Negombo. The learned High Court Judge allowed the appeal and set aside the Order of the learned Magistrate dated 16th November 2017, marked **P27**, on 20th June 2018**.** In his order, the learned High Court Judge specifically stated that there is no impediment to file a new certificate in the Magistrates' Court in accordance with the law.

Thereafter, the 2nd Respondent issued a final notice again to the Petitioner to pay a sum of Rs. 6,132,905.10 to the 5th Respondent as his EPF entitlement, and in the event of failure to pay the said amount, the case would be filed to recover it under Section 38(2) of the Act before the relevant Magistrates' Court, marked **P28**. It is to be noted that the notices marked **P16** and **P28** are substantially identical.

The Petitioner filed the instant application, seeking, *inter alia,* a mandate in the nature of a *writ of certiorari* to quash the document marked **P28** and certain other incidental reliefs.

The notice marked **P28** is not a fresh adjudication of liability. It is a statutory recovery mechanism and merely a communication procedure used by the 1st and 2nd Respondents before instituting an action in the Magistrates' Court. The determination of EPF liability had been made prior to the issuance of the certificate.

The Petitioner has not placed before this Court the original or subsequent determination of liability, nor has it sought to quash that determination in the prayer to the Petition. The challenge is confined solely to the notice issued for the purpose of recovery.

Certiorari lies to quash an administrative decision affecting legal rights. Where the impugned document marked **P28** is merely consequential, and the foundational determination remains intact and unchallenged, the issuance of a writ would serve no practical purpose.

Even if the notice marked **P28** were quashed, the determination made by the 2nd Respondent would remain unaffected. The 1st and 2nd Respondents would be entitled to proceed in accordance with the law to recover the sums determined to be due. In such circumstances, the relief sought is plainly futile.

The facts in ***Hatton National Bank v Commissioner of Labour and Five Others CA. Writ 457/2011, decided on 31st January 2020,*** are materially similar to the instant application. The Petitioner sought a *writ of certiorari* to quash the final notice marked **P18**. The said notice was based on the decision marked **P15,** which was not sought to be quashed. The final notice had indicated that legal action would be taken to recover a sum of Rs. 9,680,869.79 from the Petitioner as EPF dues.

His Lordship Janak de Silva stated that a *writ of certiorari* will not be issued to quash **P18**, as it was not a decision, and that even if a *writ of certiorari* were issued, it would be futile, as **P15** would continue to exist.

His Lordship further states as follows;

"It is an established principle that administrative law remedies will be refused if it is futile ***[Peiris v. Gunasekera (66 NLR 498); Shamsudeen v. The Minister of Defence and External Affairs (63 NLR 430)]. In Air Vice Marshall Elmo Perera vs. Liyanage and others [(2003) 1 Sri. L. R. 331]*** *it was held that a writ would not lie if the final relief sought is a futile remedy. Similarly, in* ***Flying Officer Ratnayake vs. Commander of the Air Force and Others [(2008) 2 Sri. L. R. 162],*** *this court refused to issue a writ of mandamus directing the holding of a court material as H.E. the President had already approved the withdrawal of the commission. Accordingly, the relief claimed by the Petitioner in the form of a writ of certiorari to quash P18 is futile.*

In this context, it is noted that the Petitioner has not sought to quash the decision marked ***P15****. In* ***Weerasooriya v. The Chairman, National Housing Development Authority and Others [C.A. Application No. 866/98, C.A.M. 08.03.2004]*** *Sripavan J. (as he was then) held that the court will not set aside a document unless it is specifically pleaded and identified in express language in the prayer to the petition."*

The contention regarding the alleged contributions made under the Korean Social Security Programme relates to the merits of the liability determination. Such matters ought to have been canvassed in proceedings directly challenging that determination. In the absence of such a challenge, this court cannot examine those issues indirectly by questioning a consequential recovery notice.

Accordingly, the present application is legally misconceived and untenable. It is, therefore, liable to be dismissed.

The Employees Provident Fund Act is a social welfare legislation enacted to protect employees. The 5th Respondent lodged his complaint with the 2nd Respondent on 16th October 2013, and the determination of liability was communicated by document marked **P20** on 10th October 2016. Despite the lapse of a considerable period of time, the 5th Respondent has yet to receive statutory dues determined to be payable.

While a litigant is entitled to invoke lawful remedies available in terms of the law, the institution of successive proceedings challenging only consequential steps, without impugning the foundational determination of liability, has had the effect of delaying the recovery of sums due under a social security statute. In such circumstances, this Court is of the view that the interests of justice require the imposition of exemplary costs, both to compensate the 5th Respondent for the prolonged delay and to mark the Court's disapproval of litigation that has the practical effect of frustrating the enforcement of statutory welfare obligations.

For the foregoing reasons, the application is dismissed.

The exemplary costs in the sum of One Hundred and Fifty Thousand Rupees (Rs. 1,50,000) are imposed on the Petitioner, payable to the 5th Respondent.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL