

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

In the matter of an Appeal in terms of Article 154(P)(6) of the Constitution read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, from the Judgment dated 17th October 2019 of the Provincial High Court of Colombo in case bearing No. HCRA/79/2019.

Court of Appeal No: CA (PHC) 193/2019

HC Application No: HCRA/79/2019

MC Colombo Case No: 11147/18

Assistant Commissioner of Labour,
Colombo South District Labour Office,
Department of Labour,
Colombo 05.

Complainant

Vs.

Litro Gas Lanka Limited,
No.267,
Union Place,
Colombo 02.

Respondent

AND BETWEEN

Litro Gas Lanka Limited,
No.267,
Union Place,
Colombo 02.

Respondent-Petitioner

Vs

1. Assistant Commissioner of Labour,
Colombo South District Labour Office,
Department of Labour,
Colombo 05.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant- Respondents

AND NOW BETWEEN

1. Assistant Commissioner of Labour,
Colombo South District Labour Office,
Department of Labour,
Colombo 05.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Complainant-Respondents-Appellants

Vs.

Litro Gas Lanka Limited,
No.267,
Union Place,
Colombo 02.

Respondent-Petitioner-Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Panchali Witharana, SC for the Respondents-Appellants.

Ruwantha Cooray with Rodney Vaz instructed by Y.Y.B. Demuni
for the Respondent-Petitioner-Respondent.

Written submissions
tendered on: 27.02.2023 & 06.08.2025 by Respondent-Petitioner-
Respondent.

20.03.2023 by Complainant-Respondents-Appellants.

Judgement
Delivered: 28.01.2026

Thotawatte, J.

Background and Origin of the Dispute

This appeal arises from proceedings instituted in the Magistrate's Court of Colombo under Section 38(2) of the Employees' Provident Fund Act, No. 15 of 1958 as amended (hereinafter sometimes referred to as the "EPF Act") by the 1st Complainant-Respondent-Appellant (hereinafter sometimes referred to as the "Appellant") for the recovery of Employees' Provident Fund contributions alleged to be due in respect of a deceased workman.

The claim relates to Nallathambi Perumal, who, according to the Appellant, was employed as a cleaner by the Respondent-Petitioner-Respondent (hereinafter sometimes referred to as the "Respondent") company, then known as the Colombo Gas and Water Works Company, and presently operating as Litro Gas Lanka Limited. It is alleged that Nallathambi Perumal was employed by the said company from June 1958 to July 1978, and that such employment ceased upon his death on or about 31 July 1978. It is further alleged that no Employees' Provident Fund contributions were made in respect of him during his period of employment.

The proceedings were not initiated by the alleged employee himself, but by his surviving spouse, Rajaletchami, several decades after his death. The material placed before the Court discloses that no claim or complaint was made contemporaneously or within a reasonable time following the alleged cessation of employment. Instead, many years later, the widow addressed representations to public authorities, including His Excellency the President, seeking intervention to recover Employees' Provident Fund benefits alleged to be due to her late husband. Those representations were thereafter transmitted through the relevant administrative channels to the Department of Labour for necessary action.

Pursuant to the receipt of the complaint, the Department of Labour conducted an inquiry on or about 21 March 2018, with the participation of representatives of the Respondent company and the widow of the alleged employee. The proceedings of the said inquiry are stated to have been recorded by the Assistant Commissioner of Labour.

It is the position of the Appellant that material submitted at the inquiry, including the admissions of the Respondent's representatives, disclosed sufficient basis to conclude that the deceased had been an employee of the Respondent company during the period alleged.

The Respondent company, however, has consistently maintained that there exists no acceptable or contemporaneous evidence to establish any employer–employee relationship between it and the said Nallathambi Perumal. It is further contended that the inquiry was conducted nearly four decades after the alleged employment, and that the company representatives who attended could not have had personal knowledge of events dating back to the 1950s and 1960s. It is also pertinent to observe that the record discloses no material to indicate that the findings arrived at the said inquiry were ever formally communicated to the Respondent prior to the invocation of the statutory recovery process.

Following the said inquiry, the Assistant Commissioner of Labour issued a **certificate** under Section 38(2) of the EPF Act, certifying a sum alleged to be due as Employees’ Provident Fund contributions and surcharges in respect of the deceased employee. Based on the said certificate, proceedings were instituted in the Magistrate’s Court, culminating in an order dated 26.04.2019 directing recovery of the certified sum from the Respondent company.

Aggrieved by the said order, the Respondent company invoked the revisionary jurisdiction of the Provincial High Court, and the learned Judge of the High Court, by judgment dated 17.10.2019, revised and set aside the order of the Magistrate. The present appeal has been preferred by the Assistant Commissioner of Labour against the said judgment of the Provincial High Court.

Grounds of Appeal and Reliefs Sought

The Appellant has preferred this appeal against the judgment of the Provincial High Court dated 17.10.2019, contending that the learned High Court Judge erred in law in revising and setting aside the order of the Magistrate’s Court made on 26.04.2019.

The Appellant asserts that the learned High Court Judge misdirected himself by embarking upon an examination of the factual basis underlying the certificate issued under Section 38(2) of the EPF Act, contrary to the statutory scheme governing recovery proceedings under the Act. It is contended that the Magistrate’s Court was correct in proceeding on the footing that the certificate was validly issued by the Assistant Commissioner of Labour in the exercise of statutory authority, and that the scope for challenge was confined to the limited defences recognised by law.

The Appellant further contends that the learned High Court Judge failed to give due weight to the material recorded at the inquiry conducted by the Department of Labour, including the participation of the Respondent company's representatives and the acknowledgements made by those representatives at such inquiry. It is urged that the High Court erred in discounting the evidentiary value of these matters solely on the basis of the lapse of time.

Further, it appears that the Appellant is further contending that the learned High Court Judge exceeded the permissible limits of the revisionary jurisdiction by substituting his own assessment of the evidence for that of the Magistrate, thereby interfering with an order lawfully made pursuant to a statutory recovery mechanism.

On the above-mentioned grounds, the Appellant prays that the judgment of the Provincial High Court dated 17.10.2019 be set aside and the order of the Magistrate's Court dated 26.04.2019 directing recovery of the certified sum be restored and affirmed.

The Evolution of Judicial Thinking on Section 38(2) EPF Recovery

The EPF Act draws a clear distinction between inquiry and recovery. The determination of liability, including the existence of a default, the relevant period, and the amount due, is entrusted to the Commissioner of Labour through the statutory inquiry and assessment process. A certificate issued under Section 38(2) represents the culmination of that adjudicative process, and Section 38(3) expressly precludes any court from examining the correctness of its contents.

In *Attorney-General v. City Carriers Ltd.*¹, the Court of Appeal held that proceedings under Section 38(2) of the Employees' Provident Fund Act are recovery proceedings simpliciter, and that the Magistrate's Court is barred from examining the correctness of the assessment or permitting evidence to challenge the sums stated in the certificate, save for limited defences such as payment, identity of the defaulter, or lack of jurisdiction. When the matter reached the Supreme Court in *City Carriers Ltd. v. Attorney-General*², the Court did not disturb this summary character, but introduced a threshold qualification, holding that the conclusiveness of a certificate arises only if a valid certificate in law has been issued. The Supreme Court held that Section 38(2) requires the certificate to contain particulars of the

¹ [1991] 1 Sri. LR 227

² [1992] 2 Sri LR 257

sum due, and that a document stating only a lump sum does not constitute a certificate under the Act. The final position, being that the Magistrate’s Court may exercise recovery jurisdiction only upon the filing of a valid and statutorily compliant certificate; once such a certificate is filed, the Court’s role is confined to recovery alone, but in the absence of such a certificate, the Court has no jurisdiction to proceed at all.

The position articulated in *City Carriers* was consistently followed and applied, without deviation from its core holding. However, the more recent decision of the Supreme Court in *Laksiri International Freight Forwarders (Pvt) Ltd. v. Assistant Commissioner of Labour (Colombo East)*³ has introduced a limited refinement to the earlier approach.

The decision of the Supreme Court in “*Laksiri International Freight Forwarders*” addresses a question arising at an earlier and distinct stage of the statutory scheme, namely whether the Commissioner of Labour possessed jurisdiction in law to invoke the certificate-based recovery mechanism at the threshold.

In “*Laksiri International Freight Forwarders*” the Supreme Court held that the existence of an employer- employee relationship is not a mere factual detail, but a jurisdictional prerequisite to the lawful exercise of the Commissioner’s powers under the EPF and Payment of Gratuity regimes. Unless such a relationship is established on the basis of acceptable and cogent evidence, the statutory foundation for issuing a certificate does not arise at all.

As explained by the Supreme Court in “*Laksiri International Freight Forwarders*” the certificate-based recovery scheme under the EPF and gratuity laws operates in two stages.

The first is the **assessment stage**, at which the Commissioner of Labour conducts an inquiry, determines the existence of an employer-employee relationship, assesses liability, and issues a certificate if a sum is found to be due; in doing so, the Commissioner performs a quasi-judicial function and must observe principles of natural justice.

The second is the **recovery stage or enforcement stage**, which arises only upon the filing of a valid certificate in the Magistrate’s Court. At this stage, the Magistrate’s Court functions purely as a court of recovery and cannot inquire into matters such as employment status.

³ SC Appeal 20/2024 & SC Appeal 21/2024 SCM 14-02-2025

Where a certificate is filed under the Employees' Provident Fund or gratuity statutes, the Magistrate's Court acts solely as a court of recovery and is not empowered to inquire into the existence of an employer–employee relationship at the enforcement stage. The absence of such a relationship, however, constitutes a jurisdictional defect in the issuance of the certificate itself, which may be challenged before a superior court in revision or appeal. Where the material relied upon by the Commissioner discloses that this statutory precondition was not satisfied, the certificate is *void ab initio*, and no recovery jurisdiction arises in the Magistrate's Court.

Whether a jurisdictional objection may be entertained at the stage of enforcement

In "*Laksiri International Freight Forwarders*", the Supreme Court did not sanction any inquiry by the Magistrate's Court into the existence of an employer–employee relationship at the recovery stage; rather, it held that the failure to establish such a relationship at the assessment stage constituted a jurisdictional defect, rendering the certificate itself invalid. An invalid certificate, in turn, confers no recovery jurisdiction on the Magistrate's Court, whose authority to act arises only upon the filing of a certificate lawfully issued in accordance with the statutes.

Although at the recovery stage the Magistrate is not empowered to conduct an inquiry into whether an employer–employee relationship exists, this being a jurisdictional prerequisite, and where it is apparent on the face of the record that the certificate is *ex facie* invalid, issued without jurisdiction, or vitiated by a patent legal defect such as where it discloses no material capable of sustaining the existence of an employer–employee relationship, the statutory recovery jurisdiction is not attracted. In such circumstances, the Magistrate does not acquire authority to proceed with enforcement of the certificate and may accordingly decline to proceed with recovery.

This should not be construed as the learned Magistrate undertaking an impermissible inquiry into the correctness of the certificate, but rather as a limited *prima facie* examination of whether there exists any material disclosing the existence of the requisite employer–employee relationship, for the purpose of determining whether the statutory recovery process can lawfully proceed.

The evidence at the inquiry

The record discloses that the Appellant relies primarily on material said to have emanated from the inquiry conducted by the Assistant Commissioner of Labour, including a District-66 form and the participation of representatives of the Respondent company at such inquiry. It is not in dispute that the Appellant placed reliance on these matters before the Magistrate's Court and contended that they constituted an acknowledgment of liability sufficient to sustain recovery under Section 38(2) of the EPF Act. However, beyond the said inquiry-related material, no contemporaneous employment records, wage registers, EPF returns, or other documentary evidence referable to the alleged period of employment between 1958 and 1978 were produced.

The inquiry itself was conducted nearly four decades after the alleged employment and was attended by company representatives who could not reasonably be expected to possess personal knowledge of events dating back to that period. In these circumstances, the inquiry material relied upon by the Appellant cannot, in law, be elevated beyond its limited evidentiary value so as to displace the threshold jurisdictional requirement of establishing the existence of an employer-employee relationship.

Conclusion

As held by the Supreme Court in *"Laksiri International Freight Forwarders"*, the statutory recovery mechanism is predicated upon the prior establishment of an employer-employee relationship on the basis of material placed before the Commissioner. In the present case, the material relied upon falls short of establishing such relationship, and no reasoned finding identifying the evidentiary basis for the Commissioner's satisfaction is disclosed. In these circumstances, the certificate issued pursuant to the inquiry cannot be sustained in law, and the recovery proceedings founded thereon are vitiated by a jurisdictional defect, entitling this Court to set aside the Magistrate's order and all consequential proceedings.

For the foregoing reasons, I am of the view that the Learned High Court Judge correctly exercised the revisionary jurisdiction in setting aside the order of the Magistrate's Court, having found that the statutory pre-condition of establishing an employer-employee relationship had not been satisfied and that the certificate issued under Section 38(2) of the EPF Act was therefore vitiated by a jurisdictional defect.

Accordingly, the appeal is dismissed, and the judgment of the Provincial High Court dated 17.10.2019 is affirmed. I make no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal