

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

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

R. M. C. R. D. Rajapakshe,  
Lawyers Office,  
No. 600, New Town, Rathnapura.

**CA (Writ) App. No. 199/2023**

**PETITIONER**

**Vs.**

1. Regional Manager,  
  
Regional Office,  
No. 53/1/2, Senanayake Mawatha,  
  
Rathnapura.
2. Employees' Trust Fund Board,  
  
No. 151, Kirula Road, Colombo 05.
3. Chairman/Chief Executive Officer,  
  
Employees' Trust Fund Board,  
No. 151, Kirula Road,  
Colombo 05.

4. E.B. I. N. Wijesinghe,  
Sriyawasa, Kosgala, Kahangama,  
Rathnapura.
5. H. D. A. N. Upamali,  
No. 7/28, Ibulgoda, Batugedara,  
Rathnapura.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Shantha Jayawardena with Hiranny Damunupola, Azra Basheer, Wihangi Tissera and  
Thanuka Ranathunga for the Petitioner.

Panchali Witharana, SC for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

**Argued on:** 15.12.2025

**Delivered on:** 03.03.2026

**Dr. D. F. H. Gunawardhana, J.**

## **Judgement**

### **Introduction**

The Petitioner is an Attorney-at-Law based in the Rathnapura Judicial Zone, and she is attached to the Hatton National Bank and certain other banks (hereinafter referred as 'HNB') as a panel lawyer who attests deeds for and on behalf of the said banks, this includes HNB as well. While so serving, on a particular day, certain officers from the Employees' Trust Fund (hereinafter referred to as 'ETF') and Employees' Provident Fund (hereinafter referred to as 'EPF') Department had visited her office on the basis of an inspection which she was away; thereafter, she received certain intimation requesting her to immediately submit the particulars pertaining to the services of the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

In response to the said letter, the Petitioner denied that the 4<sup>th</sup> and 5<sup>th</sup> Respondents were employees under her, therefore there was no contract of employment between her and them, they remain only as freelancers. Thereafter, she received certain letters from the 1<sup>st</sup> to 3<sup>rd</sup> Respondents at different times directing her to pay as her contribution to the ETF and EPF for the 4<sup>th</sup> and 5<sup>th</sup> Respondent, which was alleged to be overdue in respect of those who were said to be working under her.

The Petitioner flatly denies such a liability to pay and states that they were not her employees working under her, but were only engaged as freelance clerks. However, thereafter, having sent a final notice to pay the amount due as decided by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, proceedings have been instituted in the Magistrate's Court bearing case No.66017A.

In those circumstances, the Petitioner has come before this Court by way of this Writ Application. Initially she has obtained formal notice. Upon serving notice on the Respondents, only 1<sup>st</sup> to 3<sup>rd</sup> Respondents have filed their objections, and together with their objections, they have produced certain documents marked **R1** to **R8**. According to the said objections, the Petitioner had employed the 4<sup>th</sup> and 5<sup>th</sup> Respondents under her, and therefore she is liable to pay the ETF and EPF due in respect of the services rendered by them. Accordingly, they have sought the dismissal of this application.

This matter was argued before me, and following the oral arguments were advanced by learned counsel; thereafter, they were invited to file their post-argument Written Submissions. Hence, this judgment.

### **Arguments**

The first contention of Mr. Shantha Jayawardena is that he challenges **P18**, the certificate issued by the Commissioner, on the basis that when he came to the conclusion that the 5<sup>th</sup> and 6<sup>th</sup> Respondents are employees under the EPF and ETF Act, no proper inquiry had been held, following the rules of natural justice. Therefore, he challenges the said document on that basis.

Further, he argued that there had been an inspection of the office of the Petitioner by the 3<sup>rd</sup> Respondent without even notifying the Petitioner of the day of the inspection, and in her absence, and based on that inspection, it was decided that the 5<sup>th</sup> and 6<sup>th</sup> Respondents are employees.

Thereafter, though the Petitioner made attempts to protest or ask for further inquiries to place her evidence, such opportunities have not been given to the Petitioner. Therefore, the rules of natural justice have been violated. This was reflected in **P7** and **P9**.

Ms. Witharana, S.C., on the other hand, argued that there is an unreasonable delay in prosecuting this Application by the Petitioner, since from **P18(a)** to the date of the Application is more than 13 months, and it has not been explained by the Petitioner.

The second contention of Ms. Witharana is that having conceded that the office inspection was conducted during the Petitioner's absence, the Petitioner was accorded several opportunities to present her defence by **P2**, **P3**, and **P4**; she has failed to comply with them. Therefore, sufficient opportunities were given, following the rules of natural justice. Accordingly, the Petitioner has not come with clean hands.

The third contention is that the Petitioner still can challenge **P18(a)** in Magistrate's Court proceedings in terms of Section 23; therefore, due to the alternative remedies available, the Petitioner is not entitled to maintain this Application.

The next contention is that paragraph 25 of the Petition has stated that she has filed this Application to maintain her dignity, as she has been prosecuted in the Magistrate's Court. Therefore, that cannot be done.

However, in reply, Mr. Shantha Jayawardena contended that the grounds set out in paragraph 26 of the Petition are the grounds on which the Petitioner has challenged **P18**.

### **Factual matrix**

The Petitioner is an Attorney-at-Law, practicing based in the Rathnapura Judicial Zone, she works and serves on the lawyers' panels of several banks including the HNB as well.

As part of the services so rendered by her to the said banks, she attests deeds as a Notary. For that purpose, according to her, she has employed two freelance clerks who attend to land searches,

particularly land search work at the Land Registry, and the preparation of deeds-related, for which they are paid on a case-by-case basis. She denies that she has employed them on a monthly salary basis or on any similar basis, and states that there is no proper employer – employee relationship or contract of employment between the Petitioner and the said two persons, who are cited as the 4<sup>th</sup> and 5<sup>th</sup> Respondents to this Application.

Furtherance, on 20.02.2019, when she was not in the office, certain officers from the ETF Board had visited her office and obtained certain documents in her absence, as well as a statement from the 4<sup>th</sup> and 5<sup>th</sup> Respondents; thereafter, she received an intimation from the 1<sup>st</sup> Respondent requesting her to furnish certain information relating to the alleged employment of the 4<sup>th</sup> and 5<sup>th</sup> Respondent, which is marked as **P3** annexed to the Petition.

However, thereafter, the Petitioner visited the regional office of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and had discussions with the officers therein, at which time she denied that the 4<sup>th</sup> and 5<sup>th</sup> Respondents had ever been employed under her. She further stated that there was no contract of employment or any similar contractual relationship existing between her and the said 4<sup>th</sup> and 5<sup>th</sup> Respondents, and that they merely functioned as freelance workers under her; thereafter, the Petitioner had received a letter dated 21.03.2019, marked as **P4**, calling upon her to tender documentary evidence within fourteen (14) days, namely, the documents relating to the alleged employment of the 4<sup>th</sup> and 5<sup>th</sup> Respondent. However, the Petitioner asserts that due to certain medical conditions the Petitioner has developed, she was unable to furnish the said documents within the time so required. In order to establish the same, she has produced and annexed documents marked **P5(A)** to **P5(D)**, being medical certificates and other related medical documents.

Thereafter, the Petitioner asserts that she received another notice dated 02.07.2019 and marked as **P6**, requiring her to immediately pay the amount mentioned therein as her contributions to the EPF in respect of the 4<sup>th</sup> and 5<sup>th</sup> Respondents, alleged to be due for the period from 2008 to 2018, inclusive of surcharge for the delay in payment.

However, the Petitioner replied thereto by letter dated 04.07.2019, addressed to the 1<sup>st</sup> Respondent, stating that the 4<sup>th</sup> and 5<sup>th</sup> Respondents were not her employees but freelance clerks to whom she refers work relating to land searches at the Land Ministry. The said letter is marked as **P7**. Thereafter, the Petitioner received another letter dated 09.08.2019 from the 1<sup>st</sup> Respondent, marked and annexed to the Petition as **P8**, stating that the said explanation was unacceptable unless payment was made within fourteen (14) days.

Thereafter, the Petitioner sent another letter dated 19.08.2019, addressed to the Assistant Manager of the 2<sup>nd</sup> Respondent at Narahenpita, stating that the 1<sup>st</sup> Respondent had conducted an inquiry without her participation and had decided the matter *ex parte* against her, and accordingly requesting that a proper inquiry be held; the said letter is marked as **P9**.

Despite the request for a fresh inquiry, the 1<sup>st</sup> Respondent issued a final reminder dated 10.12.2019, directing the Petitioner to make the relevant payment, with which the Petitioner did not comply.

Accordingly, the 1<sup>st</sup> Respondent has instituted proceedings in the Magistrate's Court against the Petitioner to recover the said amount. In the meantime, the Petitioner has come before this Court and, upon supporting her application, has obtained a stay order staying the proceedings in the Magistrate's Court.

According to the Objections filed by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, the Petitioner, by several letters, has accepted that the 4<sup>th</sup> and 5<sup>th</sup> Respondents are her employees. In this regard, the Respondents have marked a letter as **R2**, written by the Petitioner to the Manager of the Bank of Ceylon, Rathnapura, stating that the 4<sup>th</sup> Respondent is an employee under her, drawing a salary of Rs. 20,000/- (Twenty Thousand Rupees) per month.

In addition thereto, the Respondents have marked another letter as **R3**, addressed by the Petitioner to the Land Registrar, stating that the 5<sup>th</sup> Respondent is a clerk under her and requesting that documents be handed over to her. Further, the Respondents have marked affidavits given by the 4<sup>th</sup> and 5<sup>th</sup> Respondents, marked as **R4**, **R5**, **R6**, **R7**, and **R8**, as well as affidavits of two other persons alleged to be working under the Petitioner, stating that they had been employed under her.

In addition, the Respondents have marked a document as **R1**, being the application made by the 4<sup>th</sup> and 5<sup>th</sup> Respondents to the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, requesting that their ETF and EPF contributions be paid by the Petitioner.

Now, I will deal with the legal position.

It is observed that, on 22.05.2019, certain representatives or officers of the regional office of the EPF visited the Petitioner's office without her knowledge or prior notice and obtained certain information regarding the 4<sup>th</sup> and 5<sup>th</sup> Respondents, allegedly to establish that they were employees under the Petitioner. The said official visit was conducted without informing the Petitioner and was based on an application made by the 4<sup>th</sup> and 5<sup>th</sup> Respondents, which is marked as **R1** and annexed to the objections.

During the said visit, the officers obtained certain material belonging to the Petitioner. Without giving her an opportunity to present her defence or case, the officers informed the Petitioner, by letter dated 20.02.2019, document marked as **P2**, requesting her to submit particulars of the 4<sup>th</sup> and 5<sup>th</sup> Respondents. The Petitioner has flatly denied that the said persons were her employees, as stated in her reply marked as **P3**.

However, thereafter, the Petitioner received another letter from the 1<sup>st</sup> Respondent, requesting her to furnish or submit the particulars of the 4<sup>th</sup> and 5<sup>th</sup> Respondents regarding their employment under her; she then visited the Respondents' regional office in Rathnapura and explained that the said persons were not employed by her.

Thereafter, she again received an intimation by letter dated 09.08.2019 and document marked as **P8** annexed to the Petition, stating that her explanation could not be accepted and asking her to pay and submit the particulars of the alleged employment, which she refused on the basis that they were not employed under her, except as freelancers. Subsequently, she received letters dated 05.09.2019 and 10.12.2019, marked as **P10** and **P11** annexed to the Petition, requesting her to make payment, which was followed by several other letters.

It is apparent that no opportunity whatsoever was accorded to the Petitioner to present her defence after the report was prepared by the officers who had visited the Petitioner's office on 22.05.2019 and collected certain information against her on the basis that the 4<sup>th</sup> and 5<sup>th</sup> Respondents were her employees and that the Petitioner had not paid contributions to the EPF and ETF in respect of those two persons, thereby holding her liable to pay.

On that basis, the inquiry was conducted despite the Petitioner's several letters denying that the 4<sup>th</sup> and 5<sup>th</sup> Respondents were employed under her, including the letter dated 09.08.2019, which

followed earlier communications. Despite the Petitioner's request, made to the 2<sup>nd</sup> Respondent's Colombo office by letter dated 19.08.2019 marked as **P9**, for a fresh inquiry, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents reached the conclusion that the 4<sup>th</sup> and 5<sup>th</sup> Respondents were employed under the Petitioner and that she was liable to pay. It is evident that no opportunity was afforded to the Petitioner to present her case.

In addition to her repeated requests for a fresh inquiry to be conducted by the hierarchy, it is evident that the manner in which the inquiry was conducted against the Petitioner constitutes a clear violation of the rules of natural justice. Furthermore, it is apparent that *ex parte* evidence was taken against the Petitioner, and no proper inquiry was held. Consequently, the case against the Petitioner appears to be based entirely on evidence collected by the officers *ex parte*, without any opportunity for her to present a defence.

I rely upon Honourable Justice Arjuna Obeysekara's following dictum in the case of *Splendour Media (Pvt) Limited v. The Commissioner General of Labour and Others*<sup>1</sup> to buttress my view;

*“This Court reiterates its view that while the nature of the hearing can be left to the discretion of the administrative body, it is fundamental that an Inquiry Officer follow the principles of natural justice and affords both parties a proper hearing, including an opportunity to the employer to present his side of the story. It must however be emphasised that in ensuring procedural fairness and the adherence with the principles of natural justice, Courts will not impose requirements that make it impossible for administrative bodies to arrive at decisions in an expeditious manner or impose unnecessary shackles on their ability to take decisions. That being said, this Court is of the view that a conclusion reached in violation of the*

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<sup>1</sup> CA (Writ) Application 102/2017 (CA Minutes 01.11.2019).

*fundamental principles of natural justice should not be allowed to stand and for that reason, the decision of the 2<sup>nd</sup> Respondent, contained in 'P6', is liable to be quashed by a Writ of Certiorari.*

*As the directions in 'P8' and 'P11' are a follow up of 'PE', this Court is of the view that 'P8' and 'P11' are also liable to be quashed by a Writ of Certiorari”*

Therefore, all materials collected against the Petitioner, including letters marked **R2** and **R3**, were obtained *ex parte*. At the very least, the Petitioner should have been afforded an opportunity to cross-examine the two persons whom the Respondents claim were employed under her.

As such, the determination and decision taken against the Petitioner, directing her to pay the amount contained in the document marked as **P17**, was made without following a proper procedure and without any evidence, and is in violation of the rules of natural justice. The same is therefore irrational, illegal, and procedurally flawed, and cannot be maintained. Accordingly, the writ sought by the Petitioner should be issued.

In addition, it is further submitted that the Respondents should be directed to hold a fresh inquiry, affording the Petitioner an opportunity to ascertain whether in fact the 4<sup>th</sup> and 5<sup>th</sup> Respondents were employees of the Petitioner.

### **Conclusion**

Based on the reasons adumbrated above, I grant reliefs as prayed for in prayers (e) and (f) of the Petition.

**JUDGE OF THE COURT OF APPEAL**