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* and *Mandamus* under Article 140 of the Constitution of the Republic of Sri Lanka.

A.M.P. Prarthana Sandaruwani,
No. 183/11,
Dikwela Road,
Siyambalape.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/367/2024

1. H.K.K.A. Jayasundara,
   Commissioner General of Labour (Acting),
   Department of Labour,
   Labour Secretariat,
   No. 41, Kirula Road,
   Colombo 05.

2. A.M.G.N.D. Sumanasena,
   Commissioner of Labour (EPF),
   Department of Labour,
   Labour Secretariat,
   No. 41, Kirula Road,
   Colombo 05.

3. B.S. Yahalawela,
   Assistant Labour Commissioner,
   Colombo Central District Labour Office,
   Department of Labour,
   Labour Secretariat,
   No. 41, Kirula Road,
   Colombo 05.

4. P. Champa Nishanthi,
   No. 592, Jayanthi Niwasa,
   Heiyanthguduwa.

   Presently
   No. 192/B,
   Sirima Bandaranayake Mawatha,
   Mahara,
   Kadawatha.

5. A.M. Harshani Nisansala,
   No. 353/4/B,
   Udupila,
   Delgoda.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Sandamal Rajapaksha with Savana Ranathunga for the Petitioner.
Dr. Peshan Gunaratne, S.C. for the 1st – 3rd Respondents.

Supported on: 28.10.2025

Decided on: 19.12.2025

Mayadunne Corea J

The Petitioner in this Application sought, *inter alia*, the following reliefs:

> "*b) Grant and issue a mandate in the nature of Writ of Certiorari quashing the decision P10;*
>
> *c) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st and/or 2nd Respondents compelling to take steps to accept the nomination of the Petitioner as the designated beneficiary of the nominator;*
>
> *d) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st and/or 2nd Respondents compelling to initiate an inquiry in terms of the Employees' Provident Fund Regulations 1958 made under the Employees' Provident Act;*"

The facts of the case briefly are as follows. The deceased Ramani Renuka (herein sometimes referred to as 'nominator') was the Petitioner's maternal aunt and had been employed at Ansel Lanka (Pvt) Ltd from 1997 to 2023. Renuka had been entitled to EPF and had appointed the 4th Respondent, her younger sister, as her beneficiary. The Petitioner states that Renuka had urged the Petitioner to amend the nomination by replacing the 4th Respondent's name with the Petitioner's name. Thereafter, Renuka signed the relevant documents revoking her previous nomination. However, it is alleged that the Department of Labour refused to accept the documents due to the absence of the 2nd Respondent. Renuka had passed away shortly afterwards. The Petitioner informed the 1st Respondent of the circumstances and the Petitioner was called for an inquiry, where the 3rd Respondent informed the Petitioner that Renuka had nominated the 4th and 5th Respondents, and that the 4th Respondent needed to be summoned in order to proceed with the inquiry. The 3rd Respondent delivered an order that Renuka had nominated the 4th and 5th Respondents and the Petitioner as nominees, the Petitioner was directed to provide details of the 4th Respondent and stated that if the 4th Respondent fails to appear, the benefits of the nominator will need to be directed to the payment division for further inquiry. However, the Petitioner pleads that she was not called for a further inquiry and that the 3rd Respondent had disregarded the revocation of the previous nomination. Hence, this Writ Application.

The Petitioner's contention

The Petitioner contends that without accepting the revocation of the nominations made by the nominator and the fresh nomination issuing the document P10 is, *inter alia,* illegal, *ultra vires,* unlawful, arbitrary and capricious.

The Respondents' contention

- Petitioner has failed to exercise the alternate remedy.
- The Application has to fail as the necessary parties are not before Court.
- The material facts relied upon by the Petitioner are in dispute.

This Court will now consider the Petitioner's contention and the objections raised by the Respondents.

Analysis

It is common ground that the Petitioner's aunt had nominated her two sisters as the beneficiaries to her EPF fund. However, the Petitioner contends that on 25.09.2023, the nominator had sought to cancel the said nominations and had tendered Form "I" to cancel the previous nominations. On the same day, the nominator had nominated the Petitioner who is her niece as the beneficiary by Form "J" (which would hereinafter be called as "documents"). It was the contention of the Petitioner that her aunt, the nominator, who was critically ill with a terminal illness, had gone to hand over the two documents the said documents had not been accepted as the officer handling the said subject being not available. On 29.09.2023, three days after the nomination was changed, the nominator had expired due to the illness without handing over the two documents containing the cancellation of the nomination and the fresh nomination.

Petitioner hands over the documents

The Petitioner thereafter had handed over the documents subsequent to the death of the nominator. The Petitioner has not disclosed and has failed to plead the date she had handed over the documents. Even at the submission stage, the learned Counsel for the Petitioner did not address the issue of when the documents were handed over to the Commissioner.

Upon the handing over of the documents the Commissioner had commenced an inquiry and the Petitioner had been informed of the same. It is common ground that at the inquiry the Petitioner and one of the original nominees had been present. However, the inquiring officer had observed that in the absence of all the nominees who have been named before the revocation, the inquiry could not proceed and had requested the Petitioner to submit the addresses of the said nominees. The Petitioner's main contention is that the cancellation and the nomination had been done according to the provisions of the law and therefore the 3rd Respondent calling for an inquiry and the issuance of the document marked as P10 is bad in law.

Let me now consider the provisions pertaining to the cancellation of nominations and of making a new nomination. The said provisions are contained in the regulations made pursuant to section 46 of the Employees' Provident Fund Act, No. 15 of 1958 (as amended) (which would be hereinafter called the "Act"). The relevant regulation is found in the Employees' Provident Fund Regulations, 1958. Regulation 18, which is the pertinent regulation, reads as follows.

"

(2) A member of the Fund may at any time revoke any nomination made by him.

(3) Every nomination and every revocation of nomination under these regulations shall be effected by document which shall be in the appropriate form as hereinafter provided.

(4) Every document of nomination and every document of revocation of nomination made under these regulations by any member shall be forwarded to the Commissioner through his employer within thirty days of the execution of such document" (emphasis added).

It is clear that the nominator can change a nomination, subject to the said change being done in the prescribed form and sent to the Commissioner within the prescribed time. The Petitioner's main contention is that despite her complying with the said regulations, the Respondents have failed to affect the revocation and called for an inquiry. However, this Court observes that as per the regulations, the revocation of the nomination and the new nomination should be forwarded through the employer to the Commissioner. The Petitioner concedes that she is in breach of this provision. The Petitioner has filled the forms which had been certified by an employee of the employer and has placed the company seal. However, for reasons best known to her and not explained to the Court, the nominator had not handed the forms to the employer as contemplated in the Act for it to be *forwarded* to the Commissioner. Instead, it appears that the Petitioner had handed the said forms to the Commissioner herself, that too after the death of the nominator. Hence, the Petitioner's contention that she had complied with the regulations in the process of changing the nominee has to fail. Further, the said statement pertaining to the compliance with the provisions of the Act becomes a serious misrepresentation of a material fact. Let me now consider the impugned document marked as P10.

Does the document marked as P10 contain a final decision?

The Petitioner contends that pursuant to her following the regulations and tendering the documents to change the names of the nominee, instead of accepting it and making the necessary changes, the issuance of P10 is bad in law and therefore is liable to be quashed by a Writ of *Certiorari.*

I have considered the document P10 and find that the said document requests the addresses of the 2 nominees from the Petitioner in order to enable the Commissioner to resolve the issue that had arisen by the change of the nominee. As correctly brought to my attention by the learned State Counsel, the necessity to conduct the inquiry had occurred due to the revocation and changing of nominees being personally handed over by the Petitioner and that too subsequent to the death of the nominator. Hence, it is incumbent on the Commissioner to ascertain and verify the authenticity of the document. This Court observes that the revocation of the nomination and changing the nominee as reflected in P4 and P5 had both been done on the same date, specifically on 25.09.2023. Three days after the said revocation and the appointment of the new nominee, the nominator had passed away on 29.09.2023. In the given circumstances, the Commissioner had come to the conclusion to conduct an inquiry into the request of the Petitioner on 13.11.2023. As per the material before this Court and as per the submissions of Counsel, the reason to hold an inquiry is

explained in the observation made, namely the nominator initially nominating her two sisters as the beneficiaries, and the subsequent revocation where the documents had been handed over by the new beneficiary the Petitioner. Accordingly, the Commissioner had come to the conclusion to hold the inquiry in the presence of the said two previous nominees. This Court further observes the nomination form tendered to this Court does not contain the address of the nominees. In the absence of such addresses, the Commissioner would not be in a position to call them for an inquiry. Hence, the Commissioner had requested the Petitioner who is a relative of the said two nominees to supply the addresses of the said two nominees. Further, the said letter states that failure to provide the address would result in the file being transferred to the L division for a further investigation.

Upon being inquired by Court, the Petitioner failed to demonstrate the illegality of the said letter. Further, the letter itself demonstrates that there is no final determination of the parties' rights as it only contemplates a further inquiry to ascertain the correct nominees. It is pertinent to note what is liable to be quashed by a Writ of *Certiorari* is a decision made *ultra vires* or bad in law that affects the parties' rights. The document P10, in my view, does not contain a conclusive decision by the Commissioner. In this letter the parties' rights are not affected and further the Petitioner has failed to establish the said decision to hold an inquiry is bad in law or *ultra vires* the powers of the Commissioner.

It is trite law that a Writ of *Certiorari* would not be issued if the decision to be quashed is not a final decision that determines the rights of the parties. The Supreme Court in ***Ceylon Mineral Waters Ltd v. The District Judge, Anuradhapura*** **(1966) 70 NLR 312** held that *"an application for Writs of Certiorari and Prohibition should not be made prematurely".* The Court of Appeal in ***Wickrama Arachchi Athukoralage Asantha Udayakara v. Mr. Priyantha Weerasooriya, Inspector General of Police*** **CA/WRIT/725/24 decided on 30.01.2025** and in ***Peli Kankanamge Chandrasiri v. Department of Debt Conciliation Board*** **CA/WRIT/263/2024 decided on 24.09.2025** followed the above decision.

Hence, in my view, the Petitioner's main relief of seeking a Writ of Certiorari to quash P10 cannot be maintained.

Are necessary parties before this Court?

It is also pertinent to note that the nominator was an employee of the company Ansell Lanka (Pvt) Ltd. The said company was also a contributor to the nominator's EPF. Further, any revocation or change of nomination has to be done and the perfected forms should be tendered to the Commissioner through the employer. However, the said employer of the nominator has not been named as a party to this Application. The presence of the employer would have resolved the issue of whether documents revoking the earlier nomination and revocation of the previous nomination was done in accordance with the law and if it was so why it was not forwarded by the said company. Hence, in my view, the objection on want of necessary parties has to succeed.

In arriving at this conclusion, I am guided by the case of ***Rawaya Publishers v. Wijedasa Rajapakse and others*** **[2001] 3 SLR 213** which held,

> *"In the Context of writ applications as a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence in necessary to a complete and final decision on the question involved in the proceedings. If they are not made parties then the petition can be dismissed in limine. It has also been held that persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity."*

The material facts are in dispute

It is the contention of the Petitioner that the nominator had signed the change of nominee forms but the nominator had died before it was handed over to the Commissioner. The death certificate is marked as P6 and bears the date of death as 29.09.2023. However, in paragraph 17 of the Petition the Petitioner pleads that she had brought the Petitioner to her work place on 25.10.2023, where the necessary documents had been signed thus making it a date subsequent to the death of the nominator. This matter is aggravated as the Petitioner under oath in her supporting affidavit affirms the said fact. When this objection was taken there was no application from the Petitioner to amend the pleadings nor was there an explanation offered as to whether the date mentioned in the Petition is a typographical error. In the absence of such the Petitioner's own pleadings place the facts she relies in dispute.

It is also pertinent to note that the Petitioner has failed to plead the actual date she had tendered the change of nomination forms to the 1st Respondent. Further, there were no submissions made nor any material tendered to demonstrate the date the revocation and the new nomination was handed over to the 1st Respondent.

Finding of the address of the existing nominees

The Petitioner contends that through P10 she had been requested to find the addresses of the nominees and she is not in a position to find out the said address. However, it is observed the Petitioner has made the said two nominees Respondents in this application and also has stated the permanent address of the said Respondents. If the Petitioner is in possession of the said addresses, she could have given the said addresses to the 1st Respondent as requested in the document P10 and the inquiry could have been completed. The Petitioner has failed to give any explanation as to why she failed to give the address of the above-mentioned Respondents to the 1st Respondent.

Alternate remedy

It was the contention of the learned State Counsel that this Application in anyway has to fail as the Petitioner even if she is aggrieved by the document marked as P10 had a right of a statutory appeal. It is pertinent to note as per section 29 of the Act, a party who is aggrieved by the inquiring officer's decision is afforded a statutory right of appeal to the Tribunal of Appeal. Also, even, if the party is still aggrieved there is a right of appeal to the Court of Appeal. It appears that the Petitioner has failed to exercise these rights afforded to her by statute before invoking the Writ jurisdiction of this Court and has failed to explain her failure to exercise the said rights. It is trite law that when there is an efficacious alternate remedy the Writ Court would be reluctant to exercise its Writ jurisdiction.

In coming to this conclusion this Court has considered the case of ***Ishak v. Lakshman Perera, Director General of Customs and others*** **2003 (3) SLR 18**

In considering the submissions made and in view of the wording in the impugned document in my view this application is premature.

Conclusion

I have considered the submissions made by the Counsel and have considered the documents tendered to this Court. However, for the reasons stated above, I am not inclined to issue formal notice on the Respondents and proceed to dismiss this Application. It is also pertinent to note that this Order should not be an impediment for the Commissioner of Labour to conclude his inquiry expeditiously and according to law.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal