

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 and/or Prohibition under
Article 140 of the Constitution.

State Mortgage & Investment Bank
No. 269, Galle Road,
Kollupitiya,
Colombo 3.

Petitioner

CA (Writ) Application No.
100/2025
101/2025
102/2025
103/2025

Vs.

1. The Commissioner General of Labour
Department of Labour
No. 41, Kirula Road,
Colombo 5.
2. The Minister of labour
6th Floor, Mehewara Piyasa,
Narahenpita
Colombo 5.
3. Kumari Jayaratne,
No. 453/F, Ranamayura Mawatha,
Arangala,
Hokandara North.
4. D.L. Dias
92/A/1, Galwala Road,
Dehiwela.

5. The Ceylon Bank Employee's Union
No. 20, Temple Road,
Colombo 10.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Nigel Hatch, P.C. with Shiroshini Illangage
instructed by Kethakee Siriwardena for the
Petitioner.

Indula Hewage with Nalin Amarageewa for the
4th & 5th Respondents.

Rajin Gooneratne, S.C. for the 1st and 2nd
Respondents.

Written Submissions on : 03.12.2025 for the Petitioner.
03.12.2025 for the 4th & 5th Respondents.

Supported on : 18.11.2025

Decided on : 11.02.2026

K. Priyantha Fernando, J.(CA)

1. The Petitioner namely State Mortgage and Investment Bank in four Applications CA/Writs 100 to 103/2025 is seeking Writs of Certiorari and Prohibition as follows:

- a. Quashing the reference to industrial Arbitration under Section 4(1) of the Industrial Disputes Act No. 43 of 1950 by the Minister of Labour (2nd Respondent) to the 3rd Respondent Arbitrator set out in Gazette 01.07.2024,
 - b. Quashing the Determination of the said Arbitrator dated 03.09.2024 overruling the objections raised by the Petitioner in the hearing of Arbitration,
 - c. Prohibiting the Arbitrator hearing and determining the reference to Industrial Arbitration.
 - d. Interim relief as prayed for in prayers (f) and (g) of the Petition.
2. The Petitioner supported its Application for Notice and Interim Relief and submitted written submissions in the connected cases CA/Writ/100/2025, CA/Writ/101/2025, CA/Writ/102/2025 and CA/Writ/103/2025.
 3. It is common ground that the 4th Respondents in all four cases are employees of the Petitioner and they are members of the 5th Respondent-the Ceylon Bank Employees' Union. It is also common ground that the disciplinary inquiry commenced on 03.09.2018 and concluded on 26.12.2019 and the 4th Respondents in each inquiry found guilty by the Inquiry Officer.
 4. The contents set out below would be in relation to the case record in CA/WRT/100/2025 for ease of reference, but basic facts would apply to all the workmen involved.

BACKGROUND:

5. Based on the findings at the disciplinary inquiry, the 4th Respondent was demoted from the position of Assistant Manager (Credit) to Staff Officer Grade V, and was ordered to pay the Petitioner bank a sum of Rs. 1,304,297/- as loss and damage within two years of the order dated 19.01.2021 (**P4**).

6. Following his demotion, the 4th Respondent lodged an Appeal dated 02.02.2021 (**P5**). Pending the appeal order, the Petitioner by letter dated 03.03.2021 (**P6**) informed the 4th Respondent that the Petitioner would be compelled to take legal action if the 4th Respondent continued to fail and neglect to pay what was due to the Petitioner in compliance with **P4**.
7. Thereafter, the 4th Respondent under the Disciplinary Rules of the Petitioner lodged an Appeal dated 02.02.2021 seeking to revoke the Order dated 19.01.2021. An Appeal Order dated 27.12.2022 *inter alia* limited the demotion of the 4th Respondent for a period of two years and reduced the sum to be paid by the 4th Respondent to the Petitioner as loss and damage to Rs. 1,085,978/89/- (vide **P7**).
8. It is seen that P7 imposed reciprocal obligations on the Petitioner and the 4th Respondent, and thus one party cannot expect the other to perform their obligations without carrying out one's own obligations. The same principle applies to the workmen in CA/Writs 101 to 103/2025. Furthermore, P7 finds that it vests with the Board of the Petitioner Bank to take necessary steps to recover what is due and owing from the 4th Respondent to the Petitioner.

THE POSITION OF THE PETITIONER:

9. The 4th Respondent then refused to pay this amount, resulting in the Petitioner recovering the said amount by deducting it from his accrued benefits. The Petitioner then reinstated the 4th Respondent, thereby claiming the Appeal Order was fully satisfied and no industrial dispute existed.
10. Despite this, the Minister of Labour (2nd Respondent) published Gazette Extraordinary No. 2391/04 dated 01-07-2024, referring a purported dispute concerning the 4th Respondent and others to arbitration.
11. The Petitioner argued that this reference was *ultra vires* and void *ab initio* because it was issued after the Petitioner had already instituted legal actions in the District Court (Case Nos. DMR/115/2024 and DMR/116/2024) against other employees involved in the same transaction. The Petitioner also noted that the Court of Appeal had previously upheld the Petitioner's disciplinary decisions in related

applications CA/Writ/160/2022 and CA/Writ/506/2022. When the Arbitrator overruled the Petitioner's preliminary objections regarding jurisdiction on 03-09-2024, the Petitioner sought Writs of Certiorari and Prohibition to quash the arbitration reference and the Arbitrator's determination.

12. The Petitioner contended that the Appeal Order dated 27-12-2022 (P7) created reciprocal obligations, requiring the 4th Respondents (the employees) to pay for the losses caused to the Bank while granting them reinstatement and reduced financial liability. The Petitioner asserted that for two employees, D.L. Dias and D.N.W. Seneviratne, the amounts due were successfully recovered from withheld benefits or voluntary payment, leading to their reinstatement and the satisfaction of the Appeal Order, meaning no industrial dispute existed regarding them.
13. Conversely, the other two employees, D.D.K. Jayawardena and H.G.N.L. Wanigasekara, refused to pay the remaining sums owed, prompting the Petitioner to institute District Court actions (DMR/115/2024 and DMR/116/2024) on 29-01-2024 to recover the funds before any arbitration reference was made.
14. The Petitioner argued that the Minister's **subsequent reference to arbitration on 01-07-2024** via Gazette No. 2391/04 was *ultra vires*, arbitrary, and unreasonable because it improperly "clubbed" all four employees despite their differing legal situations and ignored the employees' failure to meet their financial obligations.
15. The Attorney General by Opinion dated 20.07.2023 specifically stated that the ultimate authority in respect of the employees is vested with the Board and the matter of non-compliance with the disciplinary/appellate order should be referred to the Board of the Petitioner (vide **P18a**).
16. The Board Resolution dated 28.08.2023 based on the Attorney General's Opinion resolved "To recover the losses from the amounts held by the Bank which are payable to the accused employees by the Bank". (vide **P18**)
17. With regard to the workmen in all four CA/Writs 100 to 103/2025 it is pleaded in paragraphs 19 - 25 of the Petition that:

- (a) The Petitioner has taken steps to recover dues from the 4th respondent in **Writ 100/2025** (Dias) from sums of money withheld from him; the remainder was deposited in the Savings Account and released to him; the 4th respondent was reinstated to his original position effective 19.01.2023 with the applicable salary and annual salary increments (vide P12); the entirety of the Appeal Order dated 27.12.2022 has been satisfied and no industrial dispute existed between the Petitioner and 4th Respondent.
- (b) In **Writ/101** (Seneviratne) Rs. 2,149,139/31/- was found to be due to the Petitioner; the Petitioner has taken steps to recover the sum of Rs. 2,099,732/72/- that was withheld; the 4th Respondent agreed to pay the remaining sum of Rs. 49,406/59/- due from her and made such payment; this per se negates any allegation of unlawful conduct by the Petitioner; the 4th Respondent was reinstated to her original position effective 14.10.2023 with the requisite salary and annual increments (vide P11 to P13a) ; as a result, the entirety of the Appeal Order (P7) has been satisfied and no industrial dispute existed between parties.
- (c) In **Writ 102** (Jayawardena) Rs. 6,183,325/- was found to be due to the Petitioner and it has taken steps to recover a sum of Rs. 1,504,322/39/- that was withheld; the 4th Respondent refused to pay the remaining Rs. 4,679,002/61/- even after the letter of demand dated 01.11.2023 (vide P13, P14, P15); the 4th Respondent was not reinstated nor increments and benefits for the rest of the period granted; thus, the Petitioner instituted DMR 115/2024 on 29.01.2024 in the District Court of Colombo to recover the sum of Rs. 4,679,002/61/- with legal interest.
- (d) In **CA/Writ/103** (Wanigasekera) Rs. 3,032,139/41/- was due and the Petitioner has taken steps to recover a sum of Rs. 1,495,188/57/- that was withheld; the 4th Respondent refused to pay the remaining Rs. 1,536,950/84/- even after the letter of demand dated 01.11.2023 (vide P12, P13, P14); thus, the 4th Respondent was not re-instated nor increments and benefits for the rest of the period granted; Petitioner filed action DMR 116/2024 by Plaint dated 29.01.2024 in the District Court of Colombo to recover Rs. 1,536,950/84/- with legal interest. (vide P15)

Significantly, the two District Court actions filed against the workmen in WRT 102/25 and 103/25 were well before the reference to Arbitration.

18. Addressing the Respondents' preliminary objections, the Petitioner refuted the claim of *laches*, explaining that the delay was due to composite changes in the Board of Directors following the Presidential and General Elections, during which strategic decisions were suspended. The Petitioner cited **Topa Sporting Goods v. Commissioner General of Labour** (1997) 2 SLR 95 and **Wijepala Mendis v. Justice P. Perera & Others** (1999) 2 SLR 110 to demonstrate that delay does not defeat an application against an *ultra vires* act. Furthermore, the Petitioner relied on **Atapattu v. People's Bank** (1997) 1 SLR 208 to assert that the Court's writ jurisdiction cannot be ousted by the Industrial Disputes Act. Finally, the Petitioner maintained that the recovery of losses from withheld benefits was lawful under Clause 16.8 of its Disciplinary Rules and the Attorney General's opinion, and urged the Court to issue notice and grant interim relief staying the arbitration.

THE POSITION OF THE 4TH AND 5TH RESPONDENTS:

19. The 4th and 5th Respondents contended that the Petitioner's application should be dismissed *in limine* due to acquiescence and *laches*. They pointed out that the Petitioner participated in the arbitration proceedings on multiple dates, including July 26, August 16, October 4, November 6, December 9, 2024, and January 16, 2025, and led evidence without initially raising jurisdictional objections. The Respondents contended that by participating and cross-examining the 4th Respondent after the Arbitrator overruled their objection on September 3, 2024, the Petitioner submitted to the tribunal's jurisdiction and could not subsequently challenge the reference.
20. Furthermore, they argued the Petitioner was guilty of *laches* as the writ application was filed on February 11, 2025, over seven months after the arbitration reference was gazetted on July 1, 2024. The Respondents rejected the Petitioner's excuse regarding changes to the Board of Directors, noting that the Board was valid and functioning in May and July 2024 when the reference was made, and the alleged "sporadic changes" only commenced in October 2024.

21. Substantively, the Respondents asserted that the Minister of Labour acted *intra vires* under Section 4 of the Industrial Disputes Act by referring the dispute to arbitration to ensure a just and equitable settlement, a jurisdiction distinct from the strict legal confines of the District Court. They argued that the pending District Court cases did not legally bar the arbitration, noting that while Section 31B(2)(b) of the Act limits a Labour Tribunal's jurisdiction if arbitration is pending, there is no statutory provision limiting an Arbitrator's jurisdiction due to pending civil court actions. To support their position that granting of writ is discretionary and can be denied due to delay or submission to jurisdiction, they cited *Jayaweera v. Assistant Commissioner of Agrarian Services, Ratnapura and another* [1996] 2 Sri LR 70. They also relied on *Hettiarachchige Jayasooriya v. N.M. Gunawathie, Divisional Secretary, Kandaketiya and 04 Others* (C.A. Writ 63/2015) decided on 26.09.2019 to argue that writ jurisdiction should not be exercised where facts are in dispute.

ANALYSIS:

22. The main submission of the Respondents was that “this Court has no jurisdiction to review the industrial dispute referred by the Minister”. However, as submitted by the learned President’s Counsel for the Petitioner that exercise of writ jurisdiction under Article 140 of the Constitution is untrammelled and is constitutionally vested for the first time since independence in the present 2nd Republican Constitution of 1978; the purported reference of the industrial dispute by the Minister under Section 4(1) of the Industrial Dispute Act (IDA) is the exercise of statutory power; there is no ouster of this Court’s jurisdiction in the IDA. As held by the Supreme Court in *Atapattu v. People’s Bank* (1997) 1 SLR 208 (SC) the constitutionally enshrined jurisdiction of this Court under Article 140 cannot be ousted by an exclusionary clause in ordinary legislation, like the IDA. Writs have consistently been issued against references of industrial disputes by the Minister of Labour. For instance, in *Upali Newspapers Ltd. v. Eksath Kamkaru Samithiya and Others* (1999) 3 SLR 205 (CA), it was held that the reference under Section 4(1) of the IDA by the Minister is bad in law as it infringed and violated the principles of independence of the judiciary enshrined in Article 116 of the Constitution. This decision was upheld by the Supreme Court reported in *Eksath Kamkaru Samithiya v. Upali Newspapers Ltd. & Others* (2001) 1 SLR 105 (SC).

23. Thus, the objection regarding the jurisdiction is overruled.
24. Regarding whether Petitioner is guilty of *laches*, it is set out in the Petition why it took a few months to reach this Court. Being a State-owned Bank consequent upon the Presidential and General Election in September and November 2024, composite changes to the composition of the board of directors of the Petitioner were anticipated and hence the decision to challenge reference to Arbitration or the Determination was pending. From or about 04.10.2024 until 31.01.2025 there have been sporadic changes to the Board of Petitioner Bank including the Chairman and the new appointments were pending approval of the Central Bank of Sri Lanka. Furthermore, during this period, the Directors have refrained from strategic and critical decision making. The new Board on 29.01.2025 has approved the institution of these proceedings. Thus, the Petitioner has sufficiently explained the delay.
25. The main issue to be resolved is whether the reference to Arbitration No. A/33/2024 published in Gazette 01.07.2024 (P13) and Determination 03.09.2024 (P14) is ultra vires or made without jurisdiction or void *ab initio* or unreasonable or contrary to law.
26. The Petitioner submitted that:
- a. There had been noncompliance with mandatory legal conditions precedent in as much as there was no industrial dispute in law between the parties which could be referred by the 2nd Respondent-Minister of Labour to Arbitration;
 - b. The reference for Arbitration (P13) made subsequent to the institution of District Court actions DMR 115/2024 and DMR 116/2024 by Plaints dated 29.01.2024 thereby rendering it bad in law as decided by the case law;
 - c. The reference for Arbitration only deals with part of the Appeal Orders that are favourable to the 4th Respondent and completely disregards the obligations towards the Petitioner and hence per se iniquitous and unreasonable;
 - d. The 4th respondent was informed by letter dated 12.09.2023 P16(e), that his extension of service was approved at a Board Meeting held on 28.08.2023 for a period of 6 months ending 12.02.2024 subject to the terms of his employment;

- e. The 4th respondent was informed of the poor performance of the Branch under his leadership by letter dated 01.11.2023-P16(f) and informed to take immediate action;
- f. By letter dated 08.12.2023-P16(g) the 4th respondent requested for an extension for one year and by letter dated 01.02.2024-P16(h) he was informed of extension for a period of six months;
- g. Based on operational requirements the 4th respondent was transferred to the Matara Branch by letter dated 21.03.2024-P16(i) and temporarily transferred to Ambalangoda Branch by letter dated 14.05.2024-P16(j).

27. It was further submitted that the **steps taken by the Petitioner to recover what was due and owing to it from the 4th respondents in WRT 100 to 103/2025 were legal:**

- a. As the ultimate authority in respect of employees is vested with the Board and the non-compliance with the Appeal Order is to be referred to the Board (vide opinion of the Attorney-General-P18a)
- b. It was authorized by the Board of the Petitioner based on P18
- c. Clause 16.8 of the Disciplinary Rules (P3 at page 87) provides that a disciplinary order will include whether the whole or a specified portion of the emoluments withheld from him should be paid to him or not on reinstatement; i.e. withholding any benefits and deduction therefrom are authorized;
- d. This reads with the Appeal Order P7 (at pg. 177) which vests, the mode of recovery of dues from the 4th respondent under P7, to the Board enabled the Petitioner to withhold what was due and make the deduction;
- e. Thus, given the express refusal of 4th respondents in all 4 cases, the deduction by the Petitioner was at all times in keeping with the law and its Disciplinary Code;
- f. The 4th respondent's wages were paid during the period of his demotion; only certain benefits were withheld and the deductions were not from his wages but from benefits accumulated to him;

g. The 4th respondent has not challenged deduction in any forum and has acquiesced in same. Thus, 4th respondent is estopped in law from challenging this deduction.

28. The Petitioner drew the attention of this Court to the Writ Applications filed by other employees who were found guilty of Charges, arising from the same incident have been decided in favour of the Petitioner in CA/WRT 160/2022 and CA/WRT 506/2022. (vide P17 and P17a).

29. The Order marked P17 which is dated 23.11.2023 is with regard to a writ of *Certiorari* quashing the decision P19 issued by the Acting General Manager of the Bank expressing his view of commencing a fresh disciplinary inquiry against the Petitioner. Moreover, the Attorney General who represented the official Respondents, namely 1st and 2nd Respondents (Commissioner General of Labour and Minister of Labour) has submitted that the impugned order (P14) is not just and equitable and hence bad in law.

30. Based on the submissions made by learned Counsel and material provided before this Court, arguable matters can be identified as follows:

- 1) Does the reference to arbitration refer only to 'injustice' to the 4th Respondent?
- 2) Does it disregard the loss and damage caused to the Petitioner and the failure of the 4th Respondent in WRT 102/2025 and WRT 103/2025 to have made due payments under the Appeal Order (P7)?
- 3) Does the reference to Arbitration completely disregard the reciprocal obligations of the parties in law?
- 4) Is the reference per se not an impartial and non-partisan reference and thus bad in law?
- 5) Has the Petitioner clubbed all four 4th Respondents in CA/Writs 100 to 103/2025 in one reference to Arbitration despite significant differences in the legal position; given that in Writs 100 and 101/2025 the money has been recovered by the Petitioner and the respective 4th Respondents were reinstated whereas in CA/Writs

102 and 103/2025 the money was not recovered and the respective 4th Respondents were thus not reinstated?

- 6) Does the reference to Arbitration (P13) and the Determination dated 03.09.2024 (P14) seek to implement only a portion of the Appeal order P7 which is favourable to the 4th Respondent disregarding their reciprocal obligations thereunder?
- 7) Are P13 and P14 per se *ultra vires* and/or unreasonable and/or contrary to law and/or void *ab initio*?

CONCLUSION:

31. In the circumstances, this Court takes the view that these matters raise arguable questions that has to be assayed and evaluated along with the merits of the arguments in these applications. The Petitioners in all four cases have satisfied the initial threshold requirement which warrants this Court to issue formal notices on the Respondents. Depending on the nature and strength of the preliminary objections raised by the Respondents, those objections should be fully considered at the final hearing after entertaining full affidavits of the Respondents.

32. Having considered the issuance of notice, the question arises whether this Court can grant interim reliefs of restraining the 3rd Respondent Arbitrator from hearing and/or determining the Arbitration No. A/33/2024 and staying proceedings in the same Arbitration until the final hearing of this Application. As discussed in *Duwearatchi & another vs. Vincent Perera & others* (1984) 2 SLR 94 an interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court and the Court should be guided by the following principles:

- i. *Will the final order be rendered nugatory if the petitioner is successful?*
- ii. *Where does the balance of convenience lie?*
- iii. *Will irreparable and irremediable mischief or injury be caused to either party?*

33. In the instant case, if not the Arbitration proceedings were stayed, the final relief sought in these applications would be nugatory. No irreparable injury will be caused to either party since stay order is only granted until the final determination of these applications. The balance of convenience favours the Petitioner.

34. Thus, interim reliefs (f) and (g) are granted.

Judge of the Court of Appeal

Hon. Rohantha Abeyseriya PC, J.(P/CA)

I agree.

President of the Court of Appeal