

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 *Prohibition*,
under and in terms of Article 140 of the Constitution
of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0026 / 2025

1. Sumithra Hasalaka (Pvt) Ltd
No.33, Thelangapatha Road,
Wattala.

PETITIONER

Vs

1. Minister of Labour
7th Floor, "Mehewara Piyasa",
Kirula Road, Narahenpita,
Colombo 05.
2. Commissioner General of Labour
Department of Labour,
Labour Secretariate,
Kirula Road, Colombo 05.
3. Assistant Commissioner of Labour
Arbitration and Industrial Court Division,
Department of Labour,
Labour Secretariat,
Kirula Road, Colombo 05.
4. Free Trade Zones and General
Services Employees Union
141, Ananda Rajakaruna Mawatha,
Colombo 10.

5. Mr. Wijesuriya Arachchige Jayawickrama
Attorney-at-Law
202/B/61, The Village Kudamaduwa,
Mattegoda.

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

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Mohamed Adamaly, P.C. with Dakshina Wickramarachchi
instructed by S. Wickramarathne for the Petitioner.
Rajika Aluwihare, S.C. for the 1st to 3rd and 6th Respondents.
S.H.A. Mohomed with Indika Senanayake for the 4th Respondent

Supported on : 28.08.2025.

Written Submissions : 29.09.2025 by the Petitioner.

Tendered On 07.10.2025 by the 4th Respondent.

Decided on : 28.10.2025.

Adithya Patabendige, J.

The Petitioner, Sumithra Hasalaka (Private)Ltd. (hereinafter referred to as “the Petitioner”) invoked the jurisdiction of this court seeking, *inter alia*, the following reliefs:

- a) A mandate in the nature of *writ of certiorari*, to quash the reference for Arbitration made by the 1st Respondent – Minister of Labour marked **P29 (a)**, which was published in the *Gazette Extraordinary* dated 18th November 2024 marked **P29 (b)**; and

- b) A mandate in the nature of *writ of prohibition*, restraining the 1st, 2nd, 3rd and 4th Respondents and/or their officers from taking any steps whatsoever to institute or pursue proceedings pursuant to the said reference made by the 1st Respondent.

When this application was taken up for support for the issuance of formal notice and interim relief, learned President's Counsel appeared for the Petitioner and for the 1st to 4th and 6th Respondents made oral submissions. Subsequently, written submissions were tendered on behalf of the Petitioner and the 4th Respondent.

Learned President's Counsel who appeared for the Petitioner challenged the reference of the 1st Respondent on following grounds.

- 1) The reference is vague, ambiguous and obscure,
- 2) That no industrial dispute existed between the Petitioner and the 4th Respondent which would have empowered the 1st Respondent to make a valid reference to Arbitration under Section 4(1) of the *Industrial Disputes Act (IDA)*.
- 3) The question of granting a salary increment lies solely within the discretion of the employer, and therefore a dispute relating to a demand for a salary increment cannot be considered an industrial dispute within the meaning of the IDA.

The facts giving rise to this application can be narrated as follows.

The Petitioner is a private limited liability company engaged in the apparel industry and, at the time of filing this application, had employed approximately 685 employees at its factory in Hasalaka.

By letter dated 27th November 2023, the 4th Respondent trade union demanded Rs.10000 as a salary increment for each workman. However, the management of the Petitioner agreed to pay an increment of Rs.1500 with effect from 1st January 2024. Dissatisfied with this decision, the 4th Respondent union, by letter dated 7th February 2024, informed the Petitioner, that the union decided to stoppage of work from 3.30 pm on 9th February 2024.

According to the petition, 167 members of the union had absented themselves from work and attended a meeting of the union, while the majority of employees continued to perform their normal duties. Thereafter, the branch union of the 4th Respondent by its letter dated 10th February 2024 informed the Petitioner, that they had commenced a strike action with effect from 09th of February 2024.

Meanwhile, the branch union of the 4th Respondent lodged a complaint with the Assistant Commissioner of Labour, Mahiyanganaya Office regarding the strike action. After several discussions between the parties, the matter was referred to the Industrial Relations Unit of the Department of Labour, Colombo.

Subsequently, the 1st Respondent, Minister of Labour referred this matter for arbitration in terms of Section 4(1) of the IDA and appointed the 5th Respondent as the Arbitrator by letter dated 24th April 2024, which was published in *Gazette Extraordinary* No. 2382/37 dated 05th August 2024. The reference for the arbitration was framed as follows.

“Whether the employees have been caused injustice by the way the establishment has acted with regard to the request made by the Free Trade Zones and General Services Employee’s Union to increase the salary by Rs.10,000 from January 2024 and if so, to what relief they are entitled.”

As stated in paragraph 45 of the amended petition dated 29/01/2025, the Petitioner averred that upon such reference, the employees who were on strike decided to resume work.

However, the Arbitrator initially appointed, Mr. Palitha Senadheera subsequently resigned, and the 1st Respondent revoked the said reference.

Thereafter, the 1st Respondent has appointed, Mr. Wijesooriya Arachchige Jayawickrama as the Arbitrator, on the same reference, which was published in *Gazette Extraordinary* No. 2411/05 dated 18th October 2024.

The Petitioner objected to this second reference on the basis that it was vague, ambiguous and obscure and requested to revoke the said reference. However, by letter dated 20th November 2024, the Petitioner was informed that the arbitration proceedings had been fixed for inquiry.

According to the document marked P29, the arbitration proceedings commenced on 18th December 2024 and were postponed to 22/01/2025. On that date, the Petitioner (the 2nd party to the arbitration proceedings) sought a postponement on the ground that the present writ application had been filed before this Court. The 4th Respondent (the 1st party to the arbitration proceedings) objected to the said application. The Arbitrator fixed the matter for order on 03/02/2025 and by order dated 06/02/2025 decided to lay by the proceedings pending the determination of this application. The said proceedings were marked “X” by the 4th Respondent by motion dated 11th February 2025.

It is to be noted that the Petitioner himself agreed before the Arbitrator that the preliminary objection whether the 1st Respondent had the power to refer the dispute for arbitration and whether the said dispute was an arbitrable dispute could be decided by the Arbitrator at the hearing.

For ease of reference, I would like to draw the attention to the following paragraph of the submissions made on behalf the Petitioner.

“දෙවන පාර්ශවය වෙනුවෙන් පිළිතුරක් වශයෙන් ගෞරවයෙන් කියා සිටින්නේ ඊට නඩුවේ ඉදිරිපත් කළ එක් කරුණක් වන්නේ කම්කරු අමාත්‍යවරයාට නිර්දේශිත කම්කරු ආරවුල බේරුම්කරණයට යොමු කිරීමට බලයක් තිබුණාද යන ප්‍රශ්නය සහ නිර්දේශිත කම්කරු ආරවුල බේරුම්කරණයක් මගින් විසඳිය යුතු ප්‍රශ්නයක් වන්නේ ද යන කරුණය. එම කරුණු බේරුම්කරු විසින් තීරණය කළ යුතු කරුණු වන බවත් එම කරුණු බේරුම්කරණයට යොමු කිරීමට අදාළ හෙයින් මේ අවස්ථාවේදී බේරුම්කරණයේ එම විරෝධතා ගැනීමට සුදුසු බව මා ගෞරවයෙන් කියා සිටී.”

As learned Counsel for the 4th Respondent pointed out, the Petitioner failed to disclose the above in his amended petition dated 29th January 2025.

In the case of *Inter Orient Logistic (PVT) Ltd. v C.M.U. and Others (2009) 2 SLR 296*, **Justice Sri Skandarajah** held that when parties before an arbitrator raise a jurisdictional objection, it is the duty of the arbitrator to determine whether he possesses jurisdiction to hear the dispute.

Justice Sri Skandaraja referred to the following paragraph of the “**THE INDUSTRIAL LAW AND ADJUDICATION BY W.E.M. ABEYSEKERA, VOLUME I PAGE 146**”.

“Upon a reference made, the Arbitrator, Labour Tribunal or industrial court is entitled to consider whether the subject matter of the dispute is an industrial dispute...”

In view of the foregoing, this court is of the view that the instant application is premature. Moreover, the Petitioner, having omitted to disclose that he had consented before the Arbitrator to the determination of the jurisdictional issue, constitutes a suppression of material fact. Such non-disclosure affects the very basis of the Petitioner’s entitlement to discretionary relief under the writ jurisdiction of this Court and also it cannot be considered to have invoked the writ jurisdiction of this Court with clean hands.

The other objection raised on behalf of the Petitioner is that the reference made by the 1st Respondent is vague, ambiguous and obscure. The dispute between the parties, however, is

limited to the demand of the 4th Respondent for a salary increment of Rs.10000 and the refusal of the Petitioner to accede to that demand and nothing more.

In view of the wording of the reference made by the 1st Respondent, as reproduced earlier, it is evident that the nature of the dispute has been clearly and specifically identified. Therefore, this Court finds no merit in the contention that the said reference is vague, ambiguous or obscure.

Adverting to the next issue, the question arises as to whether the dispute relating to the demand for a salary increment can properly be regarded as an industrial dispute within the meaning of the **IDA**.

Section 48 of the **IDA** interprets the **industrial dispute** as follows.

“Any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non – employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service, of any person, and for the purposes of this definition “workmen” includes a trade union consisting of workmen.”

As the learned President’s Counsel for the Petitioner pointed out, the grant of a salary increment lies primarily within the discretion of the employer. However, there is no legal impediment for the workmen or through their union, to make a demand for an increase in salary. Once such a demand is made and the employer disagrees, it may constitute the very foundation of an industrial dispute within the meaning of **IDA**.

The judgment in *MS Parminder Kaur v Hotel Cooperation of India and Others W.P.(C) 7358/2020* decided on 6th October 2023 and relied upon by the Petitioner, has no application to this case.

In this judgment, Court held that the issuance of a *writ of mandamus* requires the existence of a vested right and a corresponding duty on the part of the public authority which has violated. It was further held that the grant of salary increases lies within the discretion of the employer and does not constitute a vested right of the employee.

However, nowhere in the said judgment held that dispute relating to salary or increment between employers and employees cannot give rise to an industrial dispute. Accordingly, the ratio decidendi of *Ms. Parminder Kaur* (supra) bears no relevance to the instant application.

Upon careful consideration of all the circumstances, I am not satisfied that the Petitioner has established a *prima facie* case sufficient to justify the issuance of formal notice on the Respondents. Consequently, the application stands dismissed. There shall be no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL