

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

In the matter of an Application in
terms of High Court of (Special
Provisions) Act No: 19 of 1990
and the constitution of the
Democratic Socialist Republic of
Sri Lanka.

Deputy Commissioner of Labour,
Department of Labour,
Colombo 05.

Petitioner

CA (PHC) Application No: 154/2010

Uva Provincial HC No: 89/2007 (Revision)

Bandarawela MC No: 80113

Vs.

Castle Textile Industries,
St. Thomas Road,
Bandarawela.

Respondent

And Between

Castle Textile Industries,
St. Thomas Road,
Bandarawela.

Respondent – Petitioner

Vs.

Deputy Commissioner of Labour,
Department of Labour,
Colombo 05.

Petitioner – Respondent

And Between

Castle Textile Industries,
St. Thomas Road,
Bandarawela.

**Respondent – Petitioner –
Appellant**

Deputy Commissioner of Labour,
Department of Labour,
Colombo 05.

**Petitioner – Respondent –
Respondent**

**Before : P.R. WALGAMA, J
: L.T.B. DEHIDENIYA, J**

**Council : D.P.L.A. Kashyapa Perera for the Petitioner.
: Anusha Fernando, DSU for Respondent.**

Argued on : 02.06.2016

Decided on : 30.08.2016

P.R. Walgama, J

The instant appeal lies to impugned the order of the Learned High Court Judge dated 14.12.2010, and the order of the Learned Magistrate dated 13.02.2007, by which orders the liability of the Respondent-Petitioner-Appellant to contribute the EPF was affirmed and ordered the payment thereof.

The Respondent instituted action in the Magistrate Court of Bandarawela by tendering a certificate which was issued in terms of Section 38(1) of Employees Provident Fund Act No. 15 of 1958.

By the said certificate the Respondent has claimed a sum of Rs.47,72,799.25 as the contribution and a sum of Rs.20,30,398.17 a the surcharge has been claimed to be recovered.

The Respondent - Petitioner - Appellant after appearing in Court admitted the liability and proceeded to pay the said amount by instalment.

It is the categorical position of the Respondent - Petitioner - Appellant that at one stage the garment industry faced a severe drawback due to the open economy introduced by the Government policy. As a result of the said policy the fabrics were imported for a lesser price.

Therefore it is contended by the Petitioner - Appellant that at a time when the garment industry was undergoing sever losses the Complainant - Respondent had filed action in the Magistrate

Court to recover the said amount, as a amount due to the employees.

Being aggrieved by the said order the Petitioner - Appellant moved the High Court in Revision to have the said order set aside or vacate.

The Learned High Court Judge after considering the facts placed before him had dismissed the application of the Petitioner - Appellant by his order dated 14.12.2010.

Being aggrieved by the said order the Petitioner - Appellant, appealed to this Court to have the said impugned order set aside or vacate.

The only contention of the Appellant as per petition was that, Respondent has deprived the Appellant from the relief given to the employer regarding the surcharge .

Nevertheless when this matter was taken up for argument the Petitioner - Appellant drew the attention of this Court to the fact that the certificate marked as P1 as the same does not indicate the necessary details contemplated in Section 38(2) of the Employees Provident Fund Act No. 15 of 1958 as amended by Act No. 8 of 1971.

To buttress the above position the Counsel for the Petitioner-Appellant has adverted this Court to the decided cases wherein it was held that the necessary particulars should be indicated in the certificate filed in terms of Section 38(2) of the Employees Provident Fund Act.

In the case of MOHOMED AMEER .VS. YAPA ASSISTANT COMMISSIONER OF LABOUR -1998 1SLR- 156 held thus;

“Section 38(2) of the Employees Provident Fond Act No. 15 of 1958 requires that the employees in respect of whom default is alleged must be named or otherwise adequately identified; and that (at least) where default is alleged in respect of a period during which there has been changes in remuneration and/ or rates of contributions, the remuneration in relation to which the contributions and default has been computed must also be disclosed”

Further the case cited by the Petitioner - Appellant is CITY CARRIERS LTD .VS. THE ATTORNEY GENERAL

Where no particulars contained in the Certificate, but contain only the total sum alleged to be due.

Therefore the facts emerged from the above case is different from the case in hand. It is viewed from the certificate marked P1 certain particulars contained in the said certificate. Besides it is salient to note that the Respondent - Petitioner - Appellant has agreed in the Magistrate Court to pay the afore said sum by instalment, and after a period of time due to the unforeseen situation in the country in the garment industry the Petitioner - Appellant has been unable to pay the said instalment as agreed in Court.

Therefore in the above setting this Court is of the view as the Respondent - Petitioner - Appellant has agreed to pay the amount due and due to the above reason if he has defaulted to make

the payment will not make him entitled to challenge the validity of the alleged certificate at the stage of the Appeal. To cap it all this court is of the view that no material prejudice has been caused to the Appellant by not giving the names of the employees and their emoluments.

The reasons expiated above the court is compel to dismiss the appeal.

Accordingly we dismissed the appeal subject to a cost of Rs.10,000/.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL