

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

Court of Appeal Case No.  
CA (PHC) 148/2020

Provincial High Court Case No. HC  
RA 18/2018

Magistrate Court Case No.  
69117/ Labour

Assistant Labour Commissioner,  
District Labour Office,  
Gampaha.

Applicant

Vs.

Tylos Tea (Pvt) Ltd,  
No. 279,  
Sri Ratnajothi Saravanamuttu Mawatha,  
Colombo 13.

Respondent

AND

Tylos Tea (Pvt) Ltd,  
No. 279,  
Sri Ratnajothi Saravanamuttu Mawatha,  
Colombo 13.

Respondent- Petitioner

Vs.

01. Assistant Labour Commissioner,  
District Labour Office,  
Gampaha.
02. Warnakulasooriya Lakshman Anthoniyas  
Hilary Fernando,  
No.20/8, Bellanthara Road,  
Dehiwala.
03. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

Applicant- Respondents

AND NOW

Tylos Tea (Pvt) Ltd,  
No. 279,  
Sri Ratnajothi Saravanamuttu Mawatha,  
Colombo 13.

**Respondent- Petitioner- Appellant**

**Vs.**

01. Assistant Labour Commissioner,  
District Labour Office,  
Gampaha.
02. Warnakulasooriya Lakshman Anthoniyas  
Hilary Fernando,  
No.20/8, Bellanthara Road,  
Dehiwala.
03. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Applicant- Respondent- Respondents**

Before: **Damith Thotawatte, J.**  
**K.M.S. Dissanayake, J.**

Counsels: Anuruddha Dissanayake with Gamindu Karunasena instructed  
by V.G. Karunasena for the 2<sup>nd</sup> Respondent.  
Rifana Mukthar, S.C. for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

Written submissions  
tendered on: 21.03.2025 by 2<sup>nd</sup> Respondent- Respondent.

Judgement Delivered: 05.05.2026

**Thotawatte, J.**

## **Introduction**

This appeal arises from an order of the learned High Court Judge of the Provincial High Court of the Western Province holden in Gampaha (hereinafter sometimes referred to as the “High Court”) dismissing a Revision Application preferred against an order of the learned Magistrate to recover the Employees’ Provident Fund contributions due to 02<sup>nd</sup> Respondent - Respondent (hereinafter sometimes referred to as “the 02<sup>nd</sup> Respondent”) upon a certificate issued by the Applicant - 01<sup>st</sup> Respondent - Respondent (hereinafter sometimes referred to as “the 01<sup>st</sup> Respondent”), made under the provisions of Section 38(2) of the Employees’ Provident Fund Act, No. 15 of 1958, as amended (hereinafter referred to as “the EPF Act”).

When the matter was called on 06.11.2024, the Appellant was granted time until 18.12.2024 to file written submissions. Upon failure to do so, further time was extended until 27.02.2025, and the matter was fixed for argument on 02.06.2025. The Appellant again failed to file written submissions by 27.02.2025. As the Bench was not properly constituted on 02.06.2025, the matter was postponed to 16.10.2025 with additional time being granted for the filing of written submissions. On 16.10.2025, the Appellant was absent and unrepresented, and despite due notice remained so on the subsequent date 29.01.2026, fixed for argument. In these circumstances, it was evident that the Appellant was no longer interested in prosecuting the appeal. As further delay could not be justified, the Court with the agreement of the parties present, decided to deliver judgment on the material available.

## **Factual Background**

The 02<sup>nd</sup> Respondent was employed in the Appellant company and had held the position of Director from 01.01.1996 to 06.10.2005, while simultaneously serving as a Senior Management Executive of the company.

Upon resignation from employment with effect from 06.10.2005, the 02<sup>nd</sup> Respondent made several requests to the Appellant company seeking payment of statutory entitlements, including gratuity and Employees’ Provident Fund contributions. These requests were not complied with by the Appellant.

Consequently, the 2<sup>nd</sup> Respondent lodged a complaint before the Department of Labour alleging failure by the Appellant to discharge statutory obligations. Following formal inquiry, the Commissioner of Labour determined that the 02<sup>nd</sup> Respondent was entitled to EPF and gratuity payments and communicated the calculated sums to the Appellant company.

Despite notification of liability, the Appellant failed to deposit the relevant EPF contributions. A final demand notice was thereafter issued requiring payment of Rs. 990,451.20, failing which legal proceedings were to be instituted. Upon continued failure to comply, the Commissioner issued a certificate under Section 38(2) of the EPF Act, enabling recovery proceedings before the Magistrate's Court.

### **Proceedings Before the Magistrate's Court**

Upon a certificate issued under Section 38(2) of the EPF Act being filed before the learned Magistrate's Court of Pugoda seeking recovery of EPF contributions alleged to be due from the Appellant, summons had been issued on the Appellant affording an opportunity to show cause. Upon inquiry and consideration of the material placed before the Court, the learned Magistrate had made an order directing the Appellant and certain directors jointly and severally to pay the sum specified in the certificate, such sum being recoverable in the manner prescribed for the recovery of fines.

### **Revision Proceedings Before the High Court**

Aggrieved by the said order, the Appellant invoked the revisionary jurisdiction of the Provincial High Court seeking to set aside the order of the learned Magistrate. Upon consideration of the submissions made, the learned High Court Judge dismissed the Revision Application, holding that:

1. The Appellant had failed to disclose exceptional circumstances warranting revisionary intervention;
2. The matters raised did not disclose jurisdictional error or miscarriage of justice;
3. The application for revision was misconceived.

The dismissal of the Revision Application led to the institution of the present appeal before this Court.

The Appellant has filed the present Application seeking, *inter alia*, the following reliefs:

- (C) The vacation of the order of the learned Magistrate of Pugoda dated 06.04.2018
- (D) The vacation of the order of the learned Judge of the Provincial High Court of Gampaha dated 23.09.2020
- (E) To grant the relief sought by the revision application HC RA 18/2018 at the High Court of Gampaha

### **Grounds of Appeal**

The Appellant has urged several grounds in support of the present appeal, including:

1. That the learned High Court Judge erred in failing to properly consider the provisions of the EPF Act;
2. That the learned High Court Judge did not consider the rationale of *J.V.Gokal (Ceylon) Private Limited v. J.V. De Soyza et al.*
3. That the learned High Court Judge failed to consider the maintainability of an action instituted by a certificate issued under Section 38(2) of the EPF Act, on the ground that the relevant employee is a Director of the same company.
4. That the learned High Court Judge erred in failing to consider the liability of the 1<sup>st</sup> Respondent to submit documents used to calculate the EPF liability of the 2<sup>nd</sup> Respondent;
5. That the learned High Court Judge failed to properly consider the relevant legal principles and material issues arising in relation to the charges.

### **Recovery Mechanism Under Section 38(2)**

The Employees' Provident Fund Act, No. 15 of 1958 establishes a statutory mechanism for securing the payment of contributions due from employers in respect of employees covered under the Act, and vests the Commissioner of Labour with primary responsibility for the administration and enforcement of such statutory obligations. Section 38(2) of the EPF Act constitutes the principal provision governing recovery proceedings before the Magistrate's Court and empowers the Commissioner, where an employer has defaulted in the payment of contributions and recovery by other statutory means is impracticable or

inexpedient, to issue a certificate to the Magistrate having jurisdiction, upon which the Magistrate is required to proceed to recover the amount specified therein in the same manner as a fine imposed by the Court.

The filing of such certificate carries significant statutory consequences, inasmuch as it constitutes *prima facie* authority enabling the Magistrate to initiate recovery proceedings. Further, by virtue of Section 38(3) of the EPF Act, the certificate issued by the Commissioner operates as sufficient evidence that the sum stated therein is due, and the correctness of the computation of such sum is not ordinarily open to challenge before the Magistrate.

### **Alleged Failure to Consider the Provisions of the EPF Act**

The Appellant has further contended that the learned High Court Judge erred in failing to properly consider the provisions of the EPF Act. This contention, however, cannot be sustained upon a careful examination of the order under appeal and the statutory framework governing proceedings of this nature. The record demonstrates that the learned High Court Judge considered the operative provisions of the Act, particularly the statutory mechanism governing the recovery of contributions upon the issuance of a certificate under Section 38(2), and correctly appreciated the limited scope of inquiry available to the Magistrate in such proceedings. The learned High Court Judge proceeded on the well-settled footing that, by virtue of Section 38(3) of the EPF Act, a certificate issued by the Commissioner constitutes sufficient evidence that the sum specified therein is due, and that the correctness of the computation of such sum is not ordinarily open to re-examination in recovery proceedings or in revisionary jurisdiction in the absence of jurisdictional error or exceptional circumstances.

In these circumstances, the mere assertion that the provisions of the EPF Act were not properly considered, without identifying any specific statutory provision that was misapplied, misconstrued, or ignored, does not disclose any error of law. On the contrary, the approach adopted by the learned High Court Judge is consistent with the statutory scheme of the EPF Act and the settled jurisprudence governing recovery proceedings initiated upon certificates issued under Section 38(2). Accordingly, this Court is unable to accept the contention that the learned High Court Judge failed to properly consider the provisions of the Employees' Provident Fund Act, and this ground of appeal cannot be sustained.

***Alleged Failure to Consider Rationale of J.V. Gokal (Ceylon) Private Limited v. J.V. De Soyza et al.***

The Appellant has further contended that the learned High Court Judge failed to consider the rationale laid down in *J.V. Gokal (Ceylon) Private Limited v. J.V. De Soyza et al.*<sup>1</sup> and failed to consider the maintainability of proceedings instituted upon a certificate issued under Section 38(2) of the EPF Act on the footing that the relevant employee was a director of the same company. These contentions, in the view of this Court, are wholly misconceived and cannot be sustained.

Insofar as the reliance placed on *J.V. Gokal (Ceylon) Private Limited v. J.V. De Soyza et al.* is concerned, it is to be observed that the said decision arose in the context of writ jurisdiction under Article 140 of the Constitution, where the Court examined the legality of an administrative determination made by the labour authorities relating to liability under the EPF Act. In that case, the Court intervened upon finding that the inquiry officer had failed to properly consider material evidence and had misdirected himself in the application of the statutory provisions, in particular by failing to give due consideration to the requirements of Section 16 of the EPF Act before imposing surcharge liability.

The factual and procedural posture of the present matter is materially distinguishable. The present proceedings arise from recovery proceedings initiated upon a certificate issued under Section 38(2) of the EPF Act and the subsequent dismissal of a revision application by the learned High Court Judge. The question before the High Court was not whether the underlying administrative determination was liable to be quashed in writ jurisdiction, but whether exceptional circumstances existed to justify the exercise of revisionary jurisdiction in respect of an order lawfully made by the learned Magistrate. In these circumstances, the decision in *J.V. Gokal (Ceylon) Private Limited v. J.V. De Soyza et al.*<sup>2</sup>, being grounded in the supervisory jurisdiction exercised in writ proceedings, is distinguishable and does not govern the issues arising in the present case, and the failure of the learned High Court Judge to expressly refer to that decision cannot be regarded as constituting an error of law.

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<sup>1</sup> CA WRIT 04/2013, Decided on 03.02.2016,

<sup>2</sup> supra

### **Alleged Failure to Consider that the Relevant Employee is a Director of the Same Company.**

The further contention of the Appellant that proceedings instituted under Section 38(2) of the EPF Act were not maintainable on the basis that the relevant employee was a director of the Appellant company is equally untenable. The mere holding of office as a director does not, in itself, exclude the existence of an employer–employee relationship, where the material demonstrates that the individual concerned functioned under a contract of service and received remuneration in the course of covered employment. The statutory definition of an “employee” under the EPF Act is expressed in broad terms and does not provide for any automatic exclusion solely by reason of the designation of an individual as a director.

In that context, the determinative consideration remains whether the individual concerned falls within the statutory concept of an employee for the purposes of the EPF Act. The material placed before the Court, including evidence relating to remuneration and the performance of functions under the Appellant’s authority, supports the conclusion that the 2<sup>nd</sup> Respondent functioned in a capacity attracting statutory obligations under the EPF Act. The learned Magistrate, having acted upon the certificate issued under Section 38(2), proceeded on the footing that the 2<sup>nd</sup> Respondent was entitled to the protection of the Act, and no jurisdictional defect or patent illegality has been demonstrated in that determination.

### **Failure to Consider Alleged Liability to Produce Calculation Documents**

The Appellant further contended that the learned High Court Judge erred in failing to consider the alleged liability of the 1<sup>st</sup> Respondent to produce the documents used to calculate the Employees’ Provident Fund liability payable to the 2<sup>nd</sup> Respondent. This contention is without merit. Proceedings instituted upon a certificate issued under Section 38(2) of the EPF Act proceed on the statutory effect of such certificate, which, in terms of Section 38(3), constitutes sufficient evidence of the amount due. The Magistrate is not required to inquire into the correctness of the computation or call for supporting documentation in the absence of a recognized statutory defense. As no ground such as payment, misidentification, want of jurisdiction, or patent defect in the certificate was established.

## **Alleged Failure to Consider Relevant Legal Principles and Issues Relating to the Charges**

The Appellant's contention that the learned High Court Judge failed to consider the relevant legal principles and material issues is unsupported by the record and cannot be sustained. The order demonstrates that the learned High Court Judge examined the proceedings before the Magistrate within the proper confines of revisionary jurisdiction, namely whether any jurisdictional error, procedural irregularity, or miscarriage of justice had been established.

Revision is not a substitute for an appellate re-evaluation of evidence. The issues arising in relation to the charges were considered within the applicable statutory framework, and no failure to address any material question of law has been shown. The Appellant's grievance amounts, in substance, to disagreement with the conclusions reached rather than the identification of any legal misdirection. In the absence of any demonstrated error going to jurisdiction, this ground of appeal is rejected.

## **Exceptional Circumstances**

The existence of exceptional circumstances is a threshold requirement for the invocation of revisionary jurisdiction; a principle consistently affirmed in authority. In *Thilakarathne v. Assistant Commissioner of Labour*<sup>3</sup>, the Court held that revisionary intervention is warranted only where such circumstances amount to a positive miscarriage of justice. In the present case, the Appellant has failed to demonstrate any such exceptional circumstance, whether by way of jurisdictional error, procedural irregularity, or manifest injustice. In the absence of such circumstances, the learned High Court Judge was justified in declining to interfere.

## **Conclusion**

For the reasons set out hereinbefore, this Court is of the considered view that the order of the learned High Court Judge dismissing the Revision Application does not disclose any error of law, procedural irregularity, or circumstance warranting appellate interference.

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<sup>3</sup> CA CPA 39/2019 Decided on 08.07.2020

Accordingly, the order of the learned Magistrate made under Section 38(2) of the Employees' Provident Fund Act is likewise affirmed. The order of the learned High Court Judge is hereby affirmed. The Appeal is dismissed subject to costs fixed at Rs. 50,000/- to be paid by the Appellant.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal