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.

CA/WRT/0177/2025

Ceylon Chocolates Limited,
No. 223, Blumenthal Road,
Colombo 13.

PETITONER

Vs.

1. Prof. Anil Jayantha Fernando,
   Minister of Labour,
   6th Floor, Mehewara Piyasa,
   Narahenpita,
   Colombo 05.

2. H.K.K.A. Jayasundara,
   Commissioner General of Labour,
   Labour Department,
   No. 41, Kirula Road,
   Colombo 05.

3. T.C.J. Peiris,
   Arbitrator,
   Labour Department,
   Colombo.

4. R. Visakha Kanthi,
5. D.M.C.P. Dissanayake,
6. I.M. Vijitha Kumari,
7. P.H. Upali Ranatunga,
8. H.M.J. Manike,
9. M.P. Dayani Perera,
10. E.C.S. Perera,
11. H.G. Amaraseeli,
12. E.R.L. Gunasekara,
13. K.M.W. Yatwara,
14. K.A. Sunil,
15. J.M. Pushpalatha,
16. W.M.B. Wijetunga,
17. D.M. Chandra Kumari,
18. W.M.W. Ranatunga,
19. M.G.P.D. Kumari,

All from
No. 21,
Temple Gardens,
Naththarampotha.

RESPONDENTS

Before : B. Sasi Mahendran, J.

Adithya Patabendige, J.

Counsel : Udith Egalahewa, PC with I. Kariapper for the Petitioner instructed by J. Sajuni Seneviratne.

Rajika Aluwihare, SC for the 1st and 2nd Respondents.

Argued on : 03.06.2026

Written Submission

Tendered on : 03.07.2026 by the Petitioner.

Decided on : 23.07.2026

Adithya Patabendige, J.

The Petitioner filed this application invoking the writ jurisdiction of this Court under Article 140 of the Constitution, seeking, *inter alia*, a *writ of certiorari* to quash the Arbitration Award dated 01st October 2024, made by the learned Arbitrator appointed under Section 4(1) of the Industrial Disputes Act, as published in Extraordinary Gazette No. 2412/30 dated 29th November 2024 marked **P3,** and a *writ of prohibition* restraining the enforcement of the said Award.

The Petitioner is Ceylon Chocolates Limited (hereinafter referred to as the Company). The 4th to 19th Respondents (hereinafter referred to as the Employees) are former employees of the Petitioner, whilst the other Respondents are the Minister of Labour, the Commissioner General of Labour, and the learned Arbitrator, namely the 1st to 3rd Respondents, respectively.

The dispute referred to arbitration concerns the gratuity payable to the Employees upon their retirement. The principal controversy is whether those Employees, all of whom joined the Petitioner before 31st December 2005, were entitled to gratuity calculated at one month’s basic salary for each completed year of service, or only to the statutory minimum gratuity of half a month’s salary.

By the impugned Award, the learned Arbitrator held that the Employees were entitled to gratuity calculated at one month's basic salary for every completed year of service, together with the statutory surcharge of 30 percent prescribed by the Payment of Gratuity Act for delayed payment.

Factual Background

The Employees contended that, by virtue of the long-standing gratuity policy of the company, employees who had joined employment on or before 31st December 2005 were entitled to a gratuity calculated at the rate of one month's basic salary for every completed year of service. The Company, however, contended that the Employees were entitled only to the statutory gratuity payable under the Payment of Gratuity Act, and that the alleged enhanced payment was merely an *ex-gratia* concession.

The aforementioned dispute was referred to the Labour Department following the complaints of the Employees.

As the dispute remained unresolved, the Hon. Minister of Labour, the 1st Respondent, acting under Section 4(1) of the Industrial Disputes Act, referred the dispute for compulsory arbitration. The terms of reference, as per the document marked **P2**, required the learned Arbitrator to determine ***"whether the Employees have been caused injustice by the gratuity being based on half a month's salary per year, changing the gratuity payment method of one month's salary per year at retirement and if so, to what relief they are entitled."***

The learned Arbitrator, after an inquiry, delivered the Award dated 01st October 2024, which was subsequently published in the Extraordinary Gazette dated 29th November 2024 marked **P3**. By that Award, the learned Arbitrator held that the Employees who had joined the Company on or before 31st December 2005 were entitled to gratuity calculated at one month's basic salary for each completed year of service and further directed payment of the statutory surcharge of 30 percent applicable to gratuity remaining unpaid beyond the period of one year as prescribed by law.

Being dissatisfied with that determination, the Company has invoked the writ jurisdiction of this Court.

The Issues to be Determined

Before considering the rival submissions, it is convenient to identify the issues that arise for determination in this application.

At the outset, it is pertinent to observe that this is not a case in which the Company alleges that the learned Arbitrator lacked jurisdiction to entertain the reference made by the Hon. Minister of Labour under Section 4(1) of the Industrial Disputes Act. Nor is it suggested that the arbitral proceedings were conducted in breach of the rules of natural justice, that the Company was denied a fair opportunity of presenting its case, or that the impugned Award is vitiated by procedural impropriety.

The principal issues that arise for determination are,

- Whether the learned Arbitrator committed any reviewable error in holding that the Employees were entitled to gratuity calculated at the rate of one month's basic salary for each completed year of service,

- Whether the learned Arbitrator erred in directing the payment of 30 percent of the surcharge.

These issues must be considered in the light of the well-established distinction between an appeal on the merits and judicial review. The function of this Court is not to determine whether it would itself have reached the same conclusion on the evidence, but whether the impugned Award is affected by a reviewable error of law, jurisdiction or irrationality warranting the grant of the relief sought. Accordingly, this Court is not concerned with the correctness of the decision on its merits, nor is it entitled to substitute its own findings of fact merely because it may have reached a different conclusion on the evidence.

The Evidence before the Learned Arbitrator

The impugned Award demonstrates that the learned Arbitrator considered both the oral and documentary evidence tendered by the parties. The documentary evidence included, *inter alia*, Board Resolution No. 01/2016, marked **V13**, the service particulars of the Employees, documents relating to gratuity payments previously made by the Company, and the audited financial statements produced during the arbitration.

A reading of the impugned Award further reveals that the learned Arbitrator did not dispose of the dispute based on a single document or an isolated circumstance. Instead, he examined the evidence as a whole and considered the cumulative effect of the documentary material together with the oral testimony before arriving at his conclusions.

The principal criticism advanced by the Company is that the learned Arbitrator misdirected himself in concluding that the Employees were entitled to gratuity calculated at the rate of one month's basic salary for each completed year of service. It was submitted that such payments were merely *ex-gratia* in nature and that Board Resolution No. 01/2016 expressly brought that practice to an end.

The Employees, however, contend that the learned Arbitrator correctly interpreted the documentary evidence and that the Board Resolution itself recognised the existing entitlement of employees recruited prior to 31st December 2005 while introducing a different gratuity scheme prospectively.

It is therefore necessary to examine the principal documentary evidence relied upon by the parties.

The Audited Financial Statements for the Years 2007/2008 and 2012/2013

Among the documentary evidence produced before the learned Arbitrator were the audited financial statements of the Company for the financial years 2007/2008 and 2012/2013. The learned Arbitrator considered these statements in his award marked **P3**.

The financial statements for the years 2007/2008 and 2012/2013 state that employees with more than ten years of service were entitled to gratuity calculated at the rate of one month's salary for each completed year of service, whilst a different basis applied to employees with shorter periods of service.

The significance of these documents lies not merely in the accounting methodology adopted by the Company but in the recognition by the Company itself, through its audited financial statements, of the gratuity policy then in force.

Board Resolution No. 01/2016

A substantial part of the Company's case rests upon Board Resolution No. 01/2016 (marked **V13)**. Learned President Counsel for the Company submitted that the Resolution demonstrates that any payment in excess of the statutory gratuity was merely an *ex-gratia* benefit which the Company was entitled to withdraw. It was therefore argued that the learned Arbitrator fundamentally misdirected himself in treating the Resolution as supporting the Employees' claim.

Having carefully considered both the Resolution and the reasoning contained in the impugned Award, I am unable to agree with that submission.

The Resolution cannot be read selectively or in isolation. Like any corporate document, it must be construed as a whole and in the context in which it was adopted.

A plain reading of the Resolution reveals that it distinguishes between employees recruited on or before 31st December 2005 and those recruited thereafter. In relation to the former category, the Resolution expressly records that gratuity had been calculated at the rate of one month's basic salary for each completed year of service. Thereafter, the Resolution provides that, with effect from 01st July 2016, gratuity would be calculated at half a month’s salary.

The significance of the Resolution, therefore, lies not merely in the alteration of the gratuity policy with prospective effect but also in its recognition of the gratuity scheme which had existed prior to that date.

The learned Arbitrator interpreted the Resolution precisely. He did not treat the Resolution as creating a new right in favour of the Employees. Rather, he regarded it as documentary evidence recognising the existence of the earlier gratuity policy applicable to employees recruited before 31st December 2005. The attention is drawn to the following paragraph of the award marked **P3.**

> **“**මෙහිදී දෙපාර්ශ්වයෙන් ඉදිරිපත් කරන ලද සාක්ෂි සුපරික්ෂාකාරීව බැලීමේදී පෙනීයන කරුණු වන්නේ,
>
> දෙවන පාර්ශ්වය වන සිලෝන් වොක්ලට් ලිමිටඩ් ආයතනය වඩා වැඩි වාසිදායක පාරිතෝෂිතයක් දීර්ඝ කාලයක් තිස්සේ, එනම් සේවකයින් විශ්‍රාම යන අවස්ථාවේ ලබාගත් අවසාන මාසික වැටුප සේවය කල වසර ගණනින් වැඩිකර පාරිතෝෂිකයක් ගෙවීමේ ප්‍රතිපත්තියක් අනුගමනය කර ඇත. එම ක්‍රියාවලිය දීර්ඝ කාලයක් තිස්සේ දෙවන පාර්ශ්වය පවත්වා ගෙන ගොස් තිබූ හෙයින් සේවකයින් හා සමාගම අතර ලිඛිත නොවන ව්‍යංග ගිවිසුමක් ක්‍රියාත්මක වී ඇත. එසේම සමාගමේ මූලාශ්‍ර වාර්තාවල ද මෙම ගෙවීම් සඳහන්ව ඇති බව සාක්ෂි මඟින් හෙළිදරව් වී ඇත.”

Whether that interpretation is ultimately the only possible interpretation is not the question before this Court. The question is whether that interpretation was one reasonably open to the learned Arbitrator upon the language of the document and the evidence as a whole.

The Company's Contention Regarding the Additional Payment

It is common ground that the Company paid the Employees gratuity calculated at the statutory rate of half a month’s salary per completed year of service. The dispute before the learned Arbitrator was confined to the Employees’ claim that they were entitled to a further payment equivalent to the remaining half month’s salary, thereby entitling them to gratuity calculated at the rate of one month’s salary per completed year of service.

The Company’s position was that whilst the statutory gratuity of half a month's salary was admittedly payable, any payment exceeding that amount was purely *ex-gratia*, made at the discretion of the Company, and did not constitute an enforceable condition of employment. Accordingly, it was contended that the Company was entitled to discontinue such discretionary payments.

The learned Arbitrator expressly considered that contention but rejected it. He observed that the Company had not produced any documentary evidence demonstrating that the additional half-month’s salary had at any stage been recognised or treated by the Company as an *ex-gratia* payment. On the contrary, the learned Arbitrator found evidence indicating that even after the adoption of Board Resolution No. 01/2016, certain employees had continued to receive gratuity calculated at the rate of one month’s salary per completed year of service. In the learned Arbitrator’s view, such evidence was inconsistent with the Company’s assertion that the additional payment was merely discretionary or *ex-gratia*.

These findings formed part of the learned Arbitrator’s evaluation of the evidence. They were findings of fact reached after considering the evidence placed before him.

Accordingly, the Company's challenge, in substance, seeks a re-evaluation of the evidentiary weight attached by the learned Arbitrator to the competing documentary material and factual evidence. Such an exercise falls outside the proper scope of judicial review under Article 140 of the Constitution.

Singer Industries (Ceylon) Ltd. v. Ceylon Mercantile Industrial & General Workers' Union (2010) 1 SLR 66

The Company placed considerable reliance upon the decision of the Supreme Court in the above Judgement in support of the contention that the Employees had failed to establish any enforceable entitlement to gratuity exceeding that prescribed by the Payment of Gratuity Act.

In ***Singer Industries***, the dispute arose out of negotiations between the employer and the trade union regarding the payment of enhanced gratuity. The Supreme Court found that although proposals and counter-proposals had been exchanged during the course of collective bargaining, no final agreement had ever been concluded. Accordingly, the Court held that the arbitrator had erred in treating an unaccepted proposal as giving rise to an enforceable obligation. The Court emphasised that, in the absence of an existing scheme, collective agreement or industrial award providing otherwise, the burden rested upon the employees to establish a valid legal basis for claiming gratuity in excess of the statutory entitlement. The Court further held that an arbitrator must act judicially and that findings unsupported by the evidence are liable to be quashed by way of *certiorari*.

In my view, that decision does not apply to the present case.

Unlike in ***Singer Industries***, the learned Arbitrator in the present case did not base his decision on an unacceptable offer, incomplete negotiations, or an expectation arising during collective bargaining.

Instead, the learned Arbitrator examined the documentary evidence placed before him, including the oral evidence, the Company's audited financial statements, Board Resolution No. 01/2016 and documentary evidence relating to the Company's actual payment of gratuity. He further rejected the Company's contention that the additional half-month's payment was merely *ex-gratia*, observing that no documentary evidence had been produced to substantiate that assertion, whilst the documentary evidence disclosed that even after Board Resolution No. 01/2016, certain employees had continued to receive gratuity calculated at the rate of one month's salary per completed year of service.

Accordingly, the present case does not concern the existence or otherwise of a concluded agreement arising out of negotiations between the parties. Rather, it concerns the evidentiary basis upon which the learned Arbitrator found that an unwritten implied agreement had come into existence between the Company and the Employees through the Company's longstanding and consistent practice regarding the payment of gratuity. In this regard, Section 10(1) of the Payment of Gratuity Act recognises that gratuity may be governed not only by the Act itself but also by, *inter alia*, an award of an arbitrator under the Industrial Disputes Act or **"any other agreement"**, where the benefits thereby conferred are more favourable to the workman. Whether such an unwritten implied agreement existed in the present case was a question of fact for the learned Arbitrator to determine upon the evidence before him. Whether that conclusion is correct on the merits is not the issue before this Court. The question for this Court is whether the learned Arbitrator was reasonably entitled, on the evidence before him, to conclude that such an unwritten implied agreement existed.

The Award of the 30 Percent Surcharge

The Company further contended that the learned Arbitrator exceeded his jurisdiction by directing payment of the surcharge prescribed under Section 5(4) of the Payment of Gratuity Act. It was submitted that Section 8 of the Act vests the determination and recovery of gratuity and surcharge exclusively in the Commissioner of Labour and the Magistrate's Court, and that an Arbitrator acting upon a reference under Section 4(1) of the Industrial Disputes Act possesses no authority to award such surcharge.

Section 5(4) creates the substantive statutory liability to pay a surcharge where an employer defaults in paying gratuity due under the Act within the prescribed period. Section 8, on the other hand, provides the statutory machinery for the recovery of gratuity and any surcharge payable thereon. The two provisions deal with different aspects. Section 5 creates the liability, whereas Section 8 prescribes the procedure by which that liability may be enforced.

It is true that Section 8 empowers the Commissioner, after such inquiry as may be deemed necessary, to issue a certificate stating the sum due as gratuity, and Subsection 8 expressly provides that, for the purposes of that Section, the expression "gratuity" includes any surcharge payable under Section 5(4). However, in my view, these provisions are directed to the enforcement and recovery of the statutory liability. They do not expressly or by necessary implication deprive an Arbitrator, acting pursuant to a valid reference under Section 4(1) of the Industrial Disputes Act, of the jurisdiction to determine whether the statutory conditions giving rise to such liability have been satisfied.

In the present case, it is common ground that the Company paid the Employees a gratuity calculated at half a month's salary for each completed year of service. The dispute concerned the Employees' claim to the balance amount required to calculate gratuity at the rate of one month's salary per completed year of service. Upon evaluating the evidence, the Arbitrator concluded that the Employees were entitled to that additional half a month’s salary as gratuity.

Once that finding was made, the balance amount necessarily constituted part of the “sum due as gratuity” within the meaning of Section 5(4). It follows that if that sum had remained unpaid beyond the statutory due date, the liability to pay the surcharge arose by operation of the statute itself.

The direction that the Company is liable to pay the statutory surcharge of 30 percent prescribed by Section 5(4)(e) of the Payment of Gratuity Act does not constitute an illegality. The statutory mechanism for the recovery and enforcement of that liability remains governed by Section 8 of the Act.

Whether the Award is Amenable to Judicial Review

Having considered the impugned Award in its entirety, I am unable to agree with the submission that the learned Arbitrator failed to approach the dispute judicially or that his conclusions are unsupported by the evidence.

The Award reveals that the Arbitrator correctly identified the issue in dispute, namely, whether the Employees were entitled to gratuity calculated at the rate of one month’s salary per completed year of service or whether their entitlement was confined to the statutory gratuity payable under the Payment of Gratuity Act.

The learned Arbitrator thereafter examined the evidence adduced by both parties. In doing so, he considered the audited financial statements of the Company, Board Resolution No. 01/2016, the documentary evidence relating to the Company's gratuity payments, and the oral evidence led before him. The Award demonstrates that each of the principal submissions advanced by the parties was considered by the learned Arbitrator before he reached his conclusions.

The Company has failed to demonstrate that the learned Arbitrator ignored any material evidence, acted upon no evidence, or took into account irrelevant considerations. Nor has it been shown that he misdirected himself on the applicable law. On the contrary, the Award demonstrates a careful consideration of the rival contentions before arriving at findings which were supported by material placed before him.

The Supreme Court in ***Singer Industries*** reaffirmed that an arbitral award may be quashed where the findings are unsupported by evidence or are contrary to the weight of the evidence. That principle is not in dispute. However, the present case is materially different. Here, the Arbitrator's conclusions were based on documentary evidence to which he was entitled. Whether that evidence should have been accorded greater or lesser weight was a matter for the Arbitrator, not for this Court.

Accordingly, I am unable to hold that the findings contained in the impugned Award disclose any jurisdictional error, error of law apparent on the face of the record or any finding so unsupported by the evidence as to justify the intervention of this Court by way of *certiorari*.

Conclusion

For all the foregoing reasons, I find that the Company has failed to establish any ground warranting the intervention of this Court in the exercise of its supervisory jurisdiction under Article 140 of the Constitution.

Accordingly, I find no basis to interfere with the impugned Award by way of judicial review.

The application is therefore dismissed. In all the circumstances of this case, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

<u>B. Sasi Mahendran, J</u>

I agree.

JUDGE OF THE COURT OF APPEAL