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

In the matter of an application for an Order in the nature of a Writ of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA WRIT 60/2023

5. Hitihamilage Upul Ruwan Gunasekara,
Siyabalapitiya, Buthgama,
Alawwa.

8. Milan Dahanayaka Yapa,
7, Ruwani Uyana, Hiththatiya,
Matara West.

10. Nawullage Chaminda Sanjeewa Pushpa Kumara Jayasinghe,
D/35/6, Madagama,
Algama.

12. Walihida Bandarage Suranga Lakmal,
No. 94/8, Dias Pedesa, Panadura.

14. Yapa Pathiranage Premaranjan Pushpa Kumara,
100/22, Gattuwana road,
Kurunegala.

15. Amila Wijetunge Jayawardena,
    184, Sri Piyaratne Mawatha,
    Galle.

16. Jayasuriya Arachchige Sanjaya Ganga
    Jayasuriya,
    Galahitiyawa, Madampe.

17. Tennakoon Mudiyanselage Dinesha
    Lakmali Tennakoon,
    No. 14/20, Mahiyanganaya Road,
    3rd Mile Post, Wegama, Bibila.

18. Kaluthanthrige Hasini Perera,
    75/17, Wanatha Road, Gangodawila,
    Nugegoda.

19. Rambukwal Mudiyanselage Aruna
    Priyadarshana,
    Bubule Gedara, Weheragoda,
    Badalkumbura.

20. Mallika Arachchige Dulani Sagarika
    Rupasinghe,
    Thalwila Ala Road, Kandiyaya,
    Okkampitiya.

21. Withanage Thushara Sandamali,
    190/53/3, Weera Mawatha,
    Depanama, Pannipitiya.

22. Raigamage Sanjeewa Niroshan Peiris,
43/D/10, Handapanagala, Mahaweva,
Manampitiya,
Polonnaruwa.

23. Rajapakse Mudiyanselage Danushka
Sampath Rajapakse,
258/2, Panaliya, Polgahawela.

24. Godapola Gedara Pradeep Madushanka,
9/74C, Siyambala Weva, Central Camp,
Ampara.

25. Disanayake Mudiyanselage Nalin
Disanayake,
Hewanigala, Bibilegama,
Passara.

26. Disanayake Mudiyanselage Damitha
Madushanka,
106, Madu Sewana, Notolagama, Ella
Road, Wellawaya.

27. Weerasekara Kodithuwakku Ralalage
Udeni Lanka Weerasekara,
31, Bithugalgama, Balangoda.

28. Kilittuwa Gamage Gishara Chamitha,
650D, Thiranagama, Hikkaduwa.

29. Kotte Gamage Suneth Rasanjana,

Gamwishala, Baragama,
Ambalanthota.

30. Arawwawela Pallegedara Sudeera Lakshantha,
88, Rathmalkaduwa Road, Singhe Pitiya,
Gampola.

31. Wickramarachchige Don Prasad Indika Gunewardena,
372/1, Bandakanda, Pilana, Agulugaha.

32. Lokuge Ranjan Prasad Kumara,
419, Dodamkahawila,
Gonapinuwala.

33. Thilanage Jayantha Kumara,
389, Moragalawaththa, Galahitiyawa,
Pilanawanchawala.

34. Thiwanka Sudarshana Wijemuni,
466/2, Samagi Mawatha,
Godawaya, Ambalanthota.

37. Peththa Durage Briyantha Pushpa Kumara,
Illakudakanda, Habaraduwa.

40. Mathew Rajkumar Asariya,
70/46/1/1, Singhe Pura, Brasiline Mawatha,

Colombo 08.

41. Sameera Yohan Gunasekara,
17/1, Kumbulwalla,
1st Lane, Riviman Kanda,
Galle.

44. Wanninayake Mudiyanselage Ananda Wanninayake,
286, Gampathi Niwasa, Aluthwaththa,
Wilawa, Balalla.

46. Kuluge Don Sagara Pushpathilaka,
No. 10, Jayanthi Mawatha,
Shop No.30, Anuradhapura.

48. Ilandari Dewage Kalum Sampath Kumara,
Nalunthulama, Vavuniya.

49. Wijesinghe Rakshitha Nadeeshan Wijesinghe,
No. 32, Samagi Mawatha, Daduruoya Gama, Makulweva.

50. Jeewandarage Asela Rathnayake,
Kanda Land, Wallawaya Road,
Moneragala.

51. Disanayake Mudiyanselage Nalaka Jayo Bandara Disanayake,

No. 01, Pannawa Handiya, Ganewaththa,
Nikadalupotha,
Kurunegala.

52. Wijesinghe Mudiyanselage Danushka Nalin Bandara,
10/1, Dabapola, Boyagane.

53. Artigalle Arachchilage Dimuthu Asanka Kumara Wijesiri,
A4, Salgala Handiya, Alpitiy,
Galapitamada.

54. Hadunpathiraja Mudiyanselage Lakshman Saman Kumara,
Thalahlen Weva, Kirimatiyawa.

55. Konaramudiyanselage Chaminda Roshan Wickramasinghe,
No. 112, Ganegoda, Naramwala.

56. Jayaneththilage Upali,
Kotuhena, Maduragoda.

57. Polipiti Acharige Chathuranga Sudarshani Disanayake,
No. 13, Swarna Jayanthi Mawatha,
Arachchikattuwa.

58. Disanayake Appuhamilage Nilantha Disanayake,

"Vacity view", Akkara hata,
Ihal Weerambuwa, Kuliyapitiya.

59. Warnakula Suriyage Ruwan Deepal Perera,
69, Ihala Labbala,
Labbala.

60. Jayanodi Mudiyanselage Chamoad Piyushan Jayakodi,
535, Mahingamuwa, Narangoda.

61. Manjula Thilakarathne,
2531, 3rd Stage, Anuradhapura.

64. Hetti Arachchige Jayantha Kumara,
346 C, Dehigahabadda,
Mitiyagoda.

65. Ratnayake Mudiyanselage Bimal Lakmin Ratnayake,
Kade Gedara, Ihala Mudunna, Uhumeeya.

66. Kaludeva Thushara Sanjeewa De Soyza,
L.C. 24, Airport Road, Anuradhapura.

67. Sellakannuge Yohan Chandra Kumar,
Nagahamulahena wattha, Siradunna,
Mawathagama.

68. Yapa Mudiyanselage Ranjith Samarajiwa,
Thalakumbura, Ambagasdova,
Uva Paranagama.

69. Ranketh Durayalage Chaminda Saman Kumara,
Arambepola, Pothuhara.

70. Dadigama Mudiyanselage Amila Sandun Kumara,
31/1, Hettimulla, Kotadeniyawa.

71. Rajakaruna Wijekoon Mudiyanselage Waruna Yoshan Dawulgala,
Agalla, Wadakada.

73. Dasanayake Mudiyanselage Uyada Sajith Mirihalla,
69, Uthuru Rawum Road, Kegalle.

74. Pitagaldeniye Mudiyanselage Eranthika Madushani Amararathna,
A/11/3/1, Buluruppa, Hettimulla.

75. Weerasinghe Arachchilage Imalka Udari Weerasinghe,
No. 113/A, Ellakkala.

76. Don Marsha Tamara Suriyage,
Bulugaspitiya, Siyabalagunaya,
Wallawaya.

77. Walakada Herath Mudiyanselage
Nishshanka Wijesuriya,
No. 06, Bollegoda, Ambathanna,
Kandy.

78. Roshan Sameera Liyanapathirana,
19/39, Thissapura, Dadayamthalawa,
Ampara.

79. Balapuwaduge Priyan Nidarshana Mendis,
116/1, R.B.01 Ela, Palugasdamana,
Polonnaruwa.

80. Nambige Sumud Perera,
135, Suwisuddarama Road,
Colombo 06.

81. Prabath Priyankara Matharage,
122/14, Popiyawaththa, Mahara,
Kadawatha.

Petitioners

Vs

1. Manusha Nanayakkara,
Minister of Labour,
Department of Labour,
Colombo 05.

1A. Prof. Anil Jayantha Fernando,
Minister of Labour,

Department of Labour,
Colombo 05.

2. R. P. A. Wimalweera,
Secretary of the Ministry,
Department of Labour,
Colombo 05.

2A. Mr. S.M Piyatissa,
Secretary of the Ministry,
Department of Labour,
Colombo 05.

3. B. K. Prabath Chandrakeerthi,
Labour Commissioner General,
Department of Labour,
Colombo 05.

3A. H. K. K. A. Jayasundara,
Labour Commissioner General,
Department of Labour,
Colombo 05.

3B. Mrs. Nadeeka Wataliyadda,
Labour Commissioner General,
Department of Labour,
Colombo 05.

4. W. Priyani Fernando,
Deputy Commissioner General,
Termination Unit,

11th Floor,
Department of Labour,
Colombo 05.

4A. Mrs. W.A.D.C.S Wickramarachchi,
Deputy Commissioner General,
Termination Unit,
11th Floor,
Department of Labour,
Colombo 05.

5. Lankabell Limited,
No. 110, Noris Canal Road,
Colombo 10.

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

7. Weerasinghe Mudiyanselage Chaminda Gunawardena,
2/8, Ittagala Road, Naranwala,
Gampaha.

8. Attanayaka Mudiyanselage Duminda Upul Bandara,
F109, Rock View Garden, Ranwala.

9. Wijesiri Liyana Kankanamge Upul Wijewardena,
43A, Middle road, China garden.

10. Wickramarachchi Withanaralage Lochana Wickramarachchi,
363/3, Sirisangabo Mawatha, Naiwala,
Veyangoda.

11. Mahendra Percy Gunarathne,
64/B/3, Udathuththiripititya, Gampaha.

12. Nissanka Achchilla Ananda Nissanka,
G 83/1, Udahalinda.

13. Gam Arachchige Sujith Sandyange,
No:367/1A, Galawalahena.

14. Imiyage Don Indika Cahandimal,
179, Srisevana, Kehelbaddara,
Udugampala.

15. Chaminda Thewarapperuma,
Hettimulla, Beruwala.

16. Hewa Devage Sanjeewa Nandalal,
No: 72, New Colani, Windikoner,
Blackpool, NuwaraEliya.

17. Nenasundarage Leslie Jayakody,
13A, Hema Niwasa, Korase, Udugampola.

18. Leyantha Chinthaka Karunarathna,
"Andungiri", Ilukthenna.

19. Godagedara Wattegei Niluka,
62/2/1, Maligakanda.

20. Nagoda Gamage Indika Jagath Kumara,
250A, Palalla Wattha.

21. Weerakoon Mudiyanseala Weerasinghe Bandara,
Kondadiniya Niwasa, Matiwala,
Rambukeewela, Kandy.

22. Tuan Roy Juhara,
58/2/D, Rose Gamage Road, Parakrama Road, Mattumagala, Ragama.

23. Yahampath Arachchige Isuru Gunamini Yahampath,
145, Polhena, Radawana.

24. Thuyadura Jayantha De Silva,
142, Welikanna, Waga.

25. Mithtrayalage Ishara Chandana,
262/34, Meddathenna.

26. Kalanka Jayanath Surawera,
218/A, Minuwangoda.

27. Navarathnam Venukanan,
Sivaguru Lane, Kokuvil.

28. Paranamamannage Sampath Indunil,
360/42, Mahara.

29. Meedodage Don Chaminda,
210B, Ihalayagoda, Imbulgoda.

30. Marasinghe Balagallage Sunindu
Madusanka Marasinghe,
75/1, Batapola, Wathuragama.

31. Thanthrige Sanju Nalinda Suwaris,
73/14, Dehiwala Road, Horethuduwa,
Keselwatta, Moratuwa.

32. Suduwa Hewage Upul Indika
1A/65, Welikadamulla Road, Mabola,
Wattala.

33. Edirisinhe Mudiyanselage Ruwan Bandara
Edirisighe,
Rikillagamuwa, Wellawa.

34. Pothuwila Kankanamge Amal Sidath
Pothuwila,
No 26, Godlik Estate, Bamunugedara,
Kurunagala.

35. Ranaweerege Dinushi Kaushalya
Ranasinghe,

"Thakshila" Pre School, Arangawa,
Minuwangoda.

36. Priyantha Anand Gunasekara,
126, Mahapathna Road, Ambagamuwa,
Udabulathgama, Gingathhena.

37. Vithana Palpita Koralalage Chaminda,
78/1, Uduthuthiripitiyia, Gampaha.

38. Konara Mudiyanselage Chaminda Roshan
Wickramasinghe,
112, Ganegoda, Narammala.

39. Rajawasam Wellala Hettige Chaminda
Niroshana Rajawasam,
165/B, Kehelbaddara, Udagampola.

40. Dissanayakalage Chaminda,
127, Pambagolla, Pinnawala.

41. Mohandiram Neri Adapparage Sadun
Dhanushka Siriwardana,
Dinidu Motors, Dagama. Maeliya.

42. Rathnakara Mudalige Darshana,
82, Akkara 19, Indigolla, Gampaha.

43. Senanayakage Chamara Sandaruwan,
369, Naiwala Road, Udugampala.

44. Pulleperuma Arachchige Muditha Sandeepani,
4/43, Uddyanawatta, Udugampola.

45. Krishan Ruvinda Jayasena,
65/B, Mandawela Road, Kesbewa.

Respondents

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

: **Hon. K. Priyantha Fernando, J. (CA)**

Counsel : Chandana Wijesuriya AAL with Chawidya Weerasinghe for the 5th,8th,10th,12th,14th,15th,17th to 35th,38th,41st,42nd,45th,47th and 49th Petitioners instructed by Wathsala Dulanjani.

Manoli Jinadasa AAL for the 5th Respondent.

Nayomi Kahawita, S.S.C. for the State.

Written Submissions on: 18.08.2025 for the 5th Respondent

08.09.2025 for the 5th,8th,10th,12th, 14th,15th,17th to 35th,38th,41st,42nd,45th,47th and 49th Petitioners.

08.09.2025 for the 50th – 62nd, 65th -72nd ,74th, 75th and 77rd -83rd Petitioners.

Supported on : 22.07.2025

Decided on : 30.10.2025

K. Priyantha Fernando, J. (CA)

By the Amended Petition dated 07.02.2023, the Petitioners, 83 employees of the 5th Respondent Company, challenged the approval granted by the Commissioner General of Labour to terminate their employment under the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 (as amended).

The 5th Respondent has applied on 15.11.2022 to terminate 127 employees, citing financial losses, and proposed a compensation package. Following an inquiry conducted by affidavits owing to Covid-19 restrictions, the 3rd Respondent (Commissioner General of Labour-COL) on 25.01.2023 granted approval to terminate 122 employees and awarded compensation.

THE POSITION OF THE PETITIONERS:

The Petitioners contended that they were denied the right to cross-examine, that the documents relied upon by the 5th Respondent were forged, and that their objections were disregarded. They also alleged that the compensation awarded was reduced without justification and was based on erroneous salary figures, excluding statutory allowances. The Petitioners argued that directing employees to be absorbed by Bell Solutions (Pvt) Ltd., a company without the relevant telecommunications license, was unlawful. They asserted that the decision marked "P5" was *ultra vires*, arbitrary, unreasonable, tainted by error of law, and violative of natural justice. Accordingly, they have sought a Writ of *Certiorari* to quash the decision and a Writ of *Mandamus* for a fresh inquiry, along with interim relief staying the operation of the impugned order.

By way of Counter Objections dated 09.05.2024, the 5th, 8th, 10th, 12th, 14th, 15th, 17th to 35th, 38th, 41st, 42nd, 45th, 47th and 49th Petitioners denied the averments in the 5th Respondent's objections. They clarified that the withdrawal of certain Petitioners was permitted by Court with an amended caption filed, and hence estoppel does not arise. They maintained that the termination is unlawful and that compensation cannot validate such illegality. They contended that the Respondent misrepresented facts, as the letters of termination could not have been received before the petition was filed. They reiterate that the 5th Respondent failed to substantiate financial losses at the inquiry and that the restructuring to Bell Solutions (Pvt) Ltd. was a misrepresentation, since even Bell Solutions had scaled down operations and terminated employees. These Petitioners prayed for the reliefs including a Writ of *Certiorari* to quash the impugned decision, along with costs and further relief deemed fit by Court.

<u>THE POSITION OF THE 5th RESPONDENT</u> (Lanka Bell Pvt. Ltd.):

The 5th Respondent raised **preliminary objections**, contending that 23 out of 83 Petitioners have already accepted compensation pursuant to the Order dated 25.01.2023 and withdrawn, thereby disentitling the remaining Petitioners to relief under principles of *estoppel* and election.

It was argued that the maximum compensation permissible under law was awarded and deposited in compliance with the Order. The Respondent denied any illegality or procedural impropriety at the inquiry, asserting that principles of natural justice were observed, and that Petitioners participated without objection until dissatisfied with the outcome.

The Respondent claimed that audited accounts and salary structures were duly submitted, that alternative employment was offered at Bell Solutions (Pvt) Ltd. without loss of continuity, and that the inquiry was properly concluded. Allegations of forged documents were rejected, emphasizing that originals were produced and accepted by the Inquiring Officer. The Respondent further noted that several Petitioners sought to withdraw from the application, and therefore the present Writ is futile, misconceived, and not maintainable. The Respondent prayed for dismissal of the Petition with costs.

By Statements of Objections – 1st, 2nd, 3rd, 4th, and 6th Respondents (Dated 09.05.2024) The 1st, 2nd, 3rd, 4th, and 6th Respondents denied the allegations in the Amended Petition, save those specifically admitted. They relied on documents filed as X1–X7 and annex an inquiry report dated 23.01.2023 marked X8. They confirmed that inquiries were held under the Termination of Employment of Workmen (Special Provisions) Act (TEWA) on several dates between December 2022 and January 2023, culminating in the decision marked "P5" with respect to 122 employees, as some withdrew their complaints. They emphasized that the Commissioner of Labour is statutorily empowered under **Section 6(d) of TEWA** to award compensation based on the prescribed formula, and that audited accounts for 2018–2021 confirmed the 5th Respondent's financial losses.

They argued that the Petitioners have failed to produce evidence to challenge the audited reports before the inquiry or any regulator. On the salary and compensation issue, the Respondents stated that information was shared with Petitioners, who produced no contradictory documents, and that budgetary allowances have no nexus with compensation under TEWA. They further argued that documents marked P3, P6(a), and P6(b) were not produced at the inquiry and cannot now be relied upon. The Respondents submitted that the Petitioners have failed to establish a *prima facie* case, that the application is misconceived in law, and that the Petitioners have not approached Court with clean hands. They prayed for dismissal of the application with costs.

The 5th Respondent further submitted that it was compelled to restructure its operations due to the collapse of the CDMA market following the rapid expansion of mobile services, which caused sustained financial losses over a considerable period. To continue providing ancillary services, Bell Solutions (Pvt) Ltd. was incorporated, and 144 employees accepted appointments there with continuity of service. However, 127 employees refused, compelling the 5th Respondent to seek approval under the **Termination of Employment of Workmen** (Special Provisions) Act, No. 45 of 1971 (TEWA). In support, the Respondent annexed audited accounts and employee particulars, including details of the **Budgetary Relief Allowance** (BRA).

CONCLUSION:

The Petitioners' bone of contention is that the decision of the Commissioner is fundamentally flawed on two grounds: a violation of natural justice and an *ultra vires* calculation of compensation.

On the first ground, they submitted that the inquiry process was unfair and procedurally defective. Several documents, including the 5th Respondent's financial reports, were either withheld from the employees or disclosed belatedly, depriving them of a reasonable opportunity to respond. Despite repeated requests, the employees were not allowed to call witnesses or cross-examine those of the 5th Respondent. Instead, the inquiry was conducted through written submissions alone, with the excuse that oral evidence was not permitted after COVID-19. The Petitioners pointed out that other inquiries had, in fact, allowed oral evidence during the same period, highlighting the inconsistency. Furthermore, the 5th Respondent was permitted, at the final stage, to file an affidavit with supporting documents, which were accepted without challenge. These circumstances, coupled with the hurried delivery of the decision within six days of the conclusion of the inquiry, demonstrate a clear denial of natural justice.

The second ground concerns the erroneous and unlawful calculation of compensation. The Petitioners argue that the Labour Commissioner failed to apply the statutory formula under **the Termination of Employment of Workmen** (Special Provisions) Act No. 45 of 1971 (TEWA) correctly by excluding the Budgetary Relief Allowance (BRA), which by law forms part of the "salary." Multiple complaints regarding the non-payment of this allowance had been filed at Labour Offices across the Country, with some already decided against the 5th Respondent and even resulting in court proceedings. Ignoring this allowance, they argue, led to an under-calculation of compensation and renders the decision *ultra vires* and arbitrary.

The Petitioners also contended that the 5th Respondent misled the Commissioner General by falsely portraying financial distress and claiming that outsourcing to Bell Solutions was a justification for termination. They point to inconsistencies in the financial statements and highlight that Bell Solutions itself was scaling down operations and ending employment, which undermines the credibility of the 5th Respondent's claims.

In light of these matters, the Petitioners submitted that the decision of the Commissioner General marked "P5" is unlawful, unreasonable, and tainted by errors of law. They prayed that it be quashed by a Writ of *Certiorari* and that a fresh inquiry be ordered before a different Labour Officer, ensuring that they are afforded a fair hearing required by law.

I will first deal with the issue of whether the inquiry process was unfair and procedurally defective.

Under the TEWA Act, there are two possible ways in which an inquiry may commence. Firstly, an employer can make an application to terminate employees and secondly an employee who is terminated without the permission of the Commissioner of Labour (herein after referred to as COL) can make a complaint.

The Petitioners have claimed that, as per P3, the COL has in other inquiries permitted the leading of evidence. However, a perusal of P3 reveals that the said inquiry was in respect of an individual complaint where an existing entity had terminated the employment of an employee for long absence without the permission of the COL. Therefore, it is obvious that such a complaint made by the workman to the COL, would require testimony as it is not based on documentation. This cannot be compared to the application made by the 5th Respondent for termination which was based on the cessation of operations due to losses, the proof of which depended on the financial statements only.

The Petitioners claimed that they could not cross-examine the contents of the affidavit. It is seen that the Petitioners too have filed counter submission with several averments taken up for the first time, unlike the 5th Respondent's affidavit, which contained no new material but reiterated the same averments that had been continuously made. The only new material placed in the affidavit seemed to be the proof that all employees who were absorbed into Bell Solutions (Pvt) Ltd, were given the same positions and benefits they held with the 5th Respondent and their service period under the 5th Respondent was also counted. The COL had the opportunity to assess each party's position and make his order accordingly.

In fact, the COL had not considered the fact that the 5th Respondent had offered alternative employment without a break in service, in his decision P5, and therefore no prejudice has been caused to the Petitioners, even by this new material.

It is the view of this Court that the 5th Respondent's submissions were in the form of an affidavit caused no prejudice, as whether the facts were presented by way of an affidavit or written submissions, the purpose was the same, namely, to present documentation to justify their respective stances.

Thus, the position of the Petitioners that there was a breach of Principles of natural justice has no merit, as an opportunity has been given to present the position of both parties and counter the positions of each other. Four days of inquiry had been held. If the Petitioners' stance is to be accepted, i.e. that failure to afford an opportunity to lead oral evidence is a breach of the Principles of Natural Justice, then all Fundamental Rights cases and Writ applications would be considered as being in breach of Principles of Natural Justice, as there is no oral evidence or cross examinations conducted.

Moreover, it is seen that even if evidence had been led, the outcome would have been the same as the 5th Respondent is no longer in operation and the maximum compensation that can be granted in terms of the formula had been given.

It is important to note that, under **Section 17** of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1973, the COL has given the discretion to conduct an inquiry in such manner not inconsistent with the principles of natural justice. Section 17 states as follows:

"*The proceedings of any inquiry held by the Commissioner for the purposes of this Act may be conducted by the Commissioner in any manner not inconsistent with the principles of natural justice, which to the Commissioner may seem best adopted to elicit proof or information concerning matters that arise at such inquiry.*"

It is held in the case of *Free Trade Zone and General Services Employees Union (FTZGSEU) vs. B.K.P. Chandrakeerthi* et al. CA WRIT/303/2022, decided on 04.10.2023, that it is not a breach of principles of natural justice for a Commissioner to decide on written submissions, especially on circumstances where any evidence led by parties would not affect a decision of a Commissioner due to statutory limitations.

In *Splendor Media (Pvt.) Limited vs. The Commissioner General of Labour* (CA (Writ) Application No. 102/2017, CA Minutes 01.11.2019), the Petitioner was seeking *inter alia* a Writ of *Certiorari* to quash the decision of the Commissioner General of Labour by which the Petitioner was directed to pay a sum of Rs. 589,400 being the sum of money that the Petitioner ought to have contributed to the Employees Provident Fund (EPF) in respect of certain allowances that had been paid by the Petitioner to the employee. His Lordship Arjuna Obeysekera J. made the following observations:

"*Whether an oral hearing is necessary or desirable depends on the relevant laws and rules or procedures which the inquiry is held, the circumstances, the nature of the right infringed, the occasion for the exercise of authority by the tribunal and the effect of the decision on a person.*

The question whether the requirements of natural justice have been met by the procedure adopted in any given case depends to a greater extent on the facts and circumstances of the case in point. Tucker L.J. held in the case of Russel v. Duke of Norfolk and Others (1949) 1 All E.R. 109, 'There are no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.'

....

The Court is of the view that the above process would enable the officers of the Department of Labour to arrive at a decision which is reasonable by both parties. This Court must state that the form of the hearing – i.e. whether it should be d oral hearing; whether the parties should have the right to cross examine the other party; whether it should be on documents and/or on written submissions or whether it should be a combination of the above ***is best left to be decided by the relevant Officer of the Department of Labour, taking into consideration the particular circumstances of each complaint****.*

......

The Court reiterates its view that while the nature of the hearing can be left to the discretion of the administrative body, it is fundamental that an Inquiry Officer follow the principles of natural justice and affords both parties a proper hearing, including an opportunity to the employer to present his side of the story. ***It must***

however be emphasized that in ensuring procedural fairness and the adherence with the principles of natural justice. Courts will not impose requirements that make it impossible for administrative bodies to arrive at decisions in an expeditious manner or impose unnecessary shackles on their ability to take decisions." (the emphasis was added)

In the circumstances of this case, it is my view that the Commissioner of Labour has applied the procedure best left to be applicable considering all the factors before him.

ARE THE LOSSES FALSE?

The Petitioners claimed that the losses were false and that false financial statements had been included in the Annual Reports of the 5th Respondent. The frivolity of these submissions is encapsulated by the 5th Respondent as follows:

a. The financial statements have been presented from the audited annual accounts of 2018/2019, 2019/2020 and 2020/2021 which are also included in the Annual Reports of the 5th Respondent. If these figures were false, the Petitioners should have challenged the same when they were first published in the relevant years. They have done nothing and alleging that these accounts are false only in 2023 when the application to terminate their services have been made to the COL.

b. In terms of Sections 148 and 150 of the Companies Act, a company is bound to keep correct financial records and the Board of Directors are responsible for the same. The Board of Directors are personally liable for any incorrect records. It cannot be reasonably presumed that accounts certified by independent auditors are incorrect and false, especially when no rational basis has been called to substantiate the allegations by the Petitioners. Furthermore, when the company has the discretion under the

Companies Act to wind up their affairs if the owners of the Company so desire, why should the 5th Respondent go to the extent of creating false accounts. Still further at the time these reports were published there was no intention or application to cease operations.

c. A private limited liability company has the freedom and discretion to wind up or restructure its operations. In such a case, the employees are terminated upon the payment of compensation, such as in this case, where the maximum amount of compensation payable by law had been granted. The 5th Respondent was required to show its financials to the COL only to determine whether the application to termination of services is genuine and to decide on the compensation. In this case, the application is obviously genuine as there is no Lanka Bell Phones on 4G internet connections presently. Therefore, there is no requirement to falsify losses.

In the above circumstances, this Court is not inclined to accede to the contention of the Petitioners that the losses are false.

<u>DOES THE CALCULATION OF COMPENSATION INCLUDE THE BUDGETARY RELIEF ALLOWANCE (BRA)?</u>

The Petitioners have taken up the position that the calculation of compensation does not include the BRA. When the application was made to the COL, the 5th Respondent in document P1, has set out the salaries of all employees including BRA as can be seen by the perusal of P1. The Petitioners have not at any stage of the inquiry before the COL, claimed that the BRA was not included in their salary as cited in the application.

Whilst the inquiry before the COL was ongoing, some of the Petitioners had filed complaints before the Department of Labour, claiming that they have not been paid the BRA. However, none of these inquiries has concluded that they were entitled to be paid a further amount as BRA or that the 5th Respondent had violated the law.

It was submitted that the BRA Act came into operation in 2016 and contains an exception for those employers who had granted a salary increase on account of cost of living during the period specified in the Act and they had to pay only the difference between the BRA amount and the quantum of the increment, if the quantum of the increment had been less than the BRA. Accordingly, as the employees of the 5th Respondent had been granted a special increment, the 5th Respondent fell under the exception. In fact, in the Labour Department in the inquiry no. CCC/IR/5/40/2023 where there was a difference of Rs 100/- between the salary increment granted to an employee and the BRA under the said Act, the Department required this difference to be paid with a surcharge and the 5th Respondent has done so. This decision of the Labour Department revealed that it had accepted position of the 5th Respondent that an increment had been given in 2016 during the period specified in the Act and the BRA requirement had been satisfied.

There is no evidence presented to the COL in the present inquiry, to the effect that the BRA had not been paid. Therefore, the Petitioners cannot now claim that the order marked as P5 does not include the BRA. Furthermore, the BRA Act does not stipulate that the said BRA should be considered for the payment of compensation under the TEWA Act, although the said BRA Act states that the BRA should be considered for payment under the EPF and ETF and Gratuity Acts. Furthermore, as the salary cited by the 5th Respondent and relied upon by the COL includes the BRA, there is no basis for the allegation that the BRA is not included. As such, the position of the Petitioners has no merit.

ARE THE RELIEFS PRAYED FUTILE?

The Commissioner of Labour has conducted inquiries on several dates between December 2022 and January 2023. Financial statements were produced, submissions exchanged, and affidavits filed. Ultimately, applying section 6D of TEWA and the formula prescribed in Gazette No. 1384/07 of 15.03.2005, the Commissioner has awarded the maximum compensation permissible by law. The Respondent stresses that this formula is mandatory and leaves no discretion, a principle confirmed in *Ran Malu Fashions (Pvt) Ltd. v. Commissioner General of Labour and Others, SC Appeal No. 210/2016, SC Minutes 08.07.2022* where the Supreme Court held that

"*Compensation is calculated strictly in accordance with the Gazette issued under section 6D of TEWA.*"

Similarly, in *St. Jude's Industries Ltd. v. Edirisinghe, CA Writ Application No. 138/2008, CA Minutes 14.09.2012* and *Continental Apparels (Pvt) Ltd. v. Commissioner General of Labour*, *CA Application No. 344/2008, CA Minutes 18.06.2012*, it has been affirmed that once the statutory formula is applied, the Commissioner has no discretion to reduce compensation.

The Respondent contended that the reliefs sought are futile as its operations have ceased and Rs. 89,633,093.83 has already been deposited with the Commissioner for distribution to employees.

The principle that writs will not issue where they would serve no useful purpose is well established in *P.S. Bus Co. Ltd. v. Members and Secretary of the Ceylon Transport Board (61 NLR 491)* and reaffirmed in *Sascon Knitting Co. v.*

Commissioner General of Labour, CA 175/2009, CA Minutes 14.12.2012, and *Selvamani v. Kumaravelupillai (2005) 1 Sri L.R. 99*.

It is clearly seen that the inquiry was document-based, as the issue was closure and not misconduct, and therefore oral evidence or cross-examination was unnecessary. This procedure was upheld in *Free Trade Zones and General Services Employees Union v. Chandrakeerthi, CA Writ Application No. 303/2022, decided 04.10.2023*, where the Court held that reliance on affidavits in such inquiries does not amount to a denial of natural justice.

The Respondent further maintained that its audited accounts, certified by professionals and submitted in compliance with the Companies Act, demonstrate genuine losses, and that allegations of fabrication are baseless. As to the BRA, it argued that these allowances were already included in the salary figures used for computation and that no prejudice has been caused.

The Respondent also highlighted misrepresentations by the Petitioners, including unfounded claims regarding TRCSL approvals for closure and the suppression of critical RTI materials. As a private entity, it was entitled to cease operations, and that the Commissioner prudently ensured maximum compensation for employees before closure.

This approach is consistent with the principles articulated in *STY International Garments (Pvt) Ltd. v. Commissioner of Labour, CA Minutes 18.11.2020*, *Alagoda v. Department of Health, CA Writ Application No. 50/2020, CA Minutes 22.05.2023*, and the House of Lords decision in *Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374*, **which limit judicial review to instances of illegality, irrationality, or procedural impropriety**.

For all the above circumstances, I am of the view that the decision of the Commissioner was lawful, rational, and procedurally proper. Accordingly, I dismiss the Petitioners' application without costs.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal