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

C.A. CASE NO. WRT/0529/23

1. Sellapperumage Nilusha Fernando,
   G.T.A. Service Station,
   No. 14A, Pagoda Road,
   Nugegoda.

   and;
   No. 02, Doris Court, Wheelers Hill,
   Victoria 3150, Australia.

   Appearing by her Attorney;

   Sellapperumage Mala Senani Fernando,
   No. 130/9A, Nawala Road,
   Nugegoda.

2. Sellapperumage Sena Ranjith Fernando,
   G.T.A. Service Station,
   No. 14A, Pagoda Road,
   Nugegoda.

PETITIONERS

Vs.

1. B. K. Prabath Chandrakeerthi,
   Commissioner General of Labour,
   Labour Secretariat,

No. 41, Kirula Road, Colombo 05.

2. P. B. Chandi Premabandu,
   Assistant Commissioner of Labour,
   Colombo – West District labour Office,
   Department of Labour,
   Colombo 05.

3. S. Udaya Krishantha,
   No. 49/36A, Ramanayake Watta,
   03rd Lane, Hokandara South.

4. Kandaiya Selvakumar,
   No. 159/1,
   Merigold Janapadaya,
   Mathurata.

5. W. S. Prematunga,
   A – 165,
   Ganewela, Kobbewela,
   Galigamuwa.

6. Registrar,
   Magistrate's Court,
   Nugegoda.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Nisala Seniya Fernando for the Petitioners.

S. Fernando, SC for the 1st and 2nd Respondents.

ARGUED ON : 22.09.2025

WRITTEN SUBMISSIONS ON : 18.09.2025 and 25.09.2025

DECIDED ON : 29.10.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioners have preferred this application, *inter alia,* to quash the award dated 11.09.2020 (P-4), 11.03.2022 (P-8), and the certificate (P-11), issued by the Commissioner of Labour under and by virtue of Section 8(1) of the Payment of Gratuity Act, No. 12 of 1983 as amended. The certificate was filed before the Magistrate of Nugegoda, dated 01.10.2022. The Commissioner of Labour, upon conducting an inquiry under the provisions of Act No. 12 of 1983, has issued a notice and certificate directing the payment of gratuity in a sum of Rs. 420,940.00 in total, in respect of three employees named and referred to in the Schedule annexed to P-11, as well as the Schedule referred to in P-4 and P-8.

2. Upon issuing P-8, the notice under Act No. 12 of 1983 on or about 11.03.2022, as the petitioners failed to make payment, the 1st respondent Commissioner of Labour, filed the said certificate (P-11) under Section 8(1) of the said Act in the Magistrate's Court of Nugegoda. The learned Magistrate has accordingly issued summons, and the petitioners have shown cause by way of a statement of objections tendered on 16.05.2023.

3. The present application was supported, and formal notice was issued. The respondents have tendered their statement of objections dated 12.07.2024, supported by an affidavit, with documents R-1 to R-16. The petitioners have then filed their counter-affidavit.

Facts.

4. The certificate is issued to the two petitioners under the name and style of "G.T.A. Service Station". The 1st petitioner is the daughter of the 2nd petitioner. According to the objections, the 2nd petitioner, S. S. Ranjith Fernando, along with two other partners, has registered a business under the name of "General Trade Agency" (P-14). According to P-14, the said registration has been effected or amended on 09.06.2005, and the date of commencement of the business is 17.05.1983. Subsequently, the two

petitioners have also registered a business name under the name and style of "G.T.A. Service Station" (P-3). According to P-3, the said registration was made on 13.06.2011, and the date of commencement of the business is 18.05.2006. The certificate P-11 is in respect of three employees who are also named as the 3rd, 4th, and the 5th respondents to this application. According to the schedule annexed to P-11, their details are as follows:

Name of the employee	**Date of first employment**	**Date of termination of employment**	**Amount due**
S. Udaya Krishantha	1999.04.23	2012.07.27	Rs. 97,175.00
Kandiah Selvakumar	2005.01.13	2017.04.11	Rs. 115,050.00
W. S. Prematunga	1995.07.04	2015.05.07	Rs. 208,715.00

5. Based on these details, the position taken up by the petitioners is that these three employees were not employed by G.T.A. Service Station. In support of which, it is submitted that the date of first employment precedes the date of commencement of the business of G.T.A. Service Station as reflected in P-3, namely 18.05.2006. The sum total of their argument is that, as the date of their first employment is well before the commencement of the said business, these persons could not have been employed during the period as alleged in P-11. On this basis, the objection is that the petitioners engaging in business under the name and style of G.T.A. Service Station is not the employer of the 3rd, 4th, and the 5th respondents referred to in P-4, P-8, and P-11.

6. On that basis, the petitioners are seeking to quash P-4, P-8, and P-11. As for matters of fact, I myself have perused the totality of the material tendered to this Court. It is apparent that S. S. R. Fernando is a common partner in both businesses, i.e., G.T.A. Service Station and General Trade

Agency. The business General Trade Agency, according to the petitioners, was dissolved in 2019. As such, the said business has subsisted up until 2019. Correspondingly, the business of G.T.A. Service Station has been subsisting since May, 2006. In the course of the argument, the learned Counsel for the petitioner did submit that the initial business between the 2nd petitioner and two other partners had run into some difficulty or dispute between them, and at a later point of time the 2nd petitioner, with his daughter the 1st petitioner, has registered G.T.A. Service Station. The petitioner has, by way of a further affidavit dated 23.07.2024, marked and produced additional documents P-15 to P-21. P-15 and P-16 are two letters admittedly written by the 2nd petitioner. P-15 is dated 26.10.2012, and P-16 is undated. What I observe on the letterhead is that it refers to G.T.A. Service Station and also to General Trade Agency. Similarly, the letterhead of P-16 also refers to both. General Trade Agency is in bigger letters at the very top end, and G.T.A. Service Station is also stated below. This clearly is a fact that leads to the inference that the 2nd petitioner, along with the 1st petitioner had conducted the business activities of G.T.A. Service Station under the business of General Trade Agency. This is what I observe. The resulting position is that these two businesses were operating along with one another and are certainly not different and distinct businesses, at least in its operation. It is in this backdrop that the three petitioners, as referred to in the three claim forms marked P-17, provide the details of the establishment as General Trade Agency. It appears that these employees had been engaged and employed by General Trade Agency, of which the 2nd petitioner was a partner.

7. The petitioners have also tendered a notice under the Payment of Gratuity Act, dated 11.03.2022 and marked P-18, which is a notice issued to General Trade Agency addressed to the 2nd petitioner along with the two other partners. The said document, P-18, is in respect of different employees; however, it is in respect of such persons employed between 1998 and 2009. What is relevant is that these two businesses have, at a particular point of time, been conducted simultaneously. That being so,

as to the issue of if the 3rd, 4th, and 5th respondents were employed by G.T.A. Service Station at the point of determining their employment, and if the said employees were absorbed into the 2nd business of which the petitioners are the partners, are matters that are relevant and may require to be considered before a proper forum. I will not venture into considering and determining this issue, as it is not immediately necessary to determine this application, in view of the objections taken based on delay and the availability of an alternate remedy. I will first consider the issue of delay.

8. The petitioners are seeking to quash P-4, P-8, and P-11, which are dated 11.09.2020, 11.03.2022, and 01.12.2022, respectively, as stated above. This application has been preferred on 13.09.2023. Accordingly, in respect of P-4, this application has been preferred three years after the issuance of the said notice, and as regards to P-11, the certificate, this application has been filed ten months after the issuance of the said certificate. It is this delay that the respondents have raised as being laches and on the part of the petitioners. The petitioners have not explained or given any probable reason for the delay. That period lapsed in relation to the respective documents and thus remains unexplained. The period of delay is a relative fact that will have to be decided and determined in the circumstances of each matter. However, in the present application, the petitioners were in fact notified of the payment of gratuity in respect of the 3rd, 4th, and 5th respondents, at least on 11.09.2020. This is the first document on which the petitioners were notified of this outstanding sum and the liability. Subsequently, the notice P-8 in March, 2022, and the certificate P-11 in December, 2022, have also been issued by the 1st respondent. In determining the period lapsed to consider laches, I would refer to P-4 dated 11.09.2020. It is that P-4 happens to be the initial decision and determination notified, and P-8 and P-11 are subsequent, consequent, or ancillary decisions taken by the 1st respondent which are all referable and originating from P-4. The subsequent notice P-8, as well as the certificate P-11, does not make any

change or variation to the initial decision or determination made by P-4. Therefore, the time will commence to run from 11.09.2020, after the first notice (P-4). I find the following dicta cited by Sobhitha Rajakaruna, J., in ***Sunethra Rupasinghe vs. D. S. K. Pushpakumara, SSP - President, Sri Lanka Hockey Federation and others*** (CA/WRIT/627/2021, decided on 08.06.2022), considering a similar issue, is relevant and pertinent:

> *"Therefore, now it is important to examine as to whether such conduct of the Petitioner and the delayed application for judicial review is reasonable. In* ***Judicial Remedies & Public Law*** *(4th ed.) at para. 9-17, Lewis states as follows:*
>
> > *'The claimant should challenge the decision which brings about the legal situation of which complaint is made. There are occasions when a claimant does not challenge that decision but waits until some consequential or ancillary decision is taken and then challenges that later decision on the ground that the earlier decision is unlawful. If the substance of the dispute relates to the lawfulness of that earlier decision and if it is that earlier decision which is, in reality, determinative of the legal position, and the later decision does not, in fact, produce any change in the legal position, then the courts may rule that the time-limit runs from that earlier decision.'"*

The above dicta stands to reason, and I am impressed and inclined to follow and accept the said principle. What is relevant and critical is the making of the operative order or determination; if a person aggrieved so desires, such party should immediately take action to assail the same. If such party allows time to lapse, and during such time certain other steps are taken, which would not be the making of the determination but certain other consequential steps, then the running of time cannot be stalled, so to say. Subsequent consequential action taken thereon will not absolve the petitioner from being guilty of laches.

9. Accordingly, the petitioners in this case are certainly guilty of delay and laches and it is a period of almost three years, which also remains unexplained. It is settled law that such delay will disentitle the petitioner

to the discretionary remedy of writ as held in the following cases. In ***Biso Menika vs. Cyril de Alwis and Others*** [1982 (1) SLR 368], Sharvananda J. (as his Lordship then was) observed that;

> *"A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver.* ***The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity*** *and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time."* [emphasis added].

In ***Gunasekera vs. Abdul Latiff*** [1995] 1 Sri L.R at page 235, Ranaraja, J., defined delay or laches as below:

> *"The word 'laches' is a derivative of the French verb 'Lacher', which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do (Stroud's Judicial Dictionary 5th Ed., pg. 1403). It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt* (the law helps those who are vigilant, not those who sleep on their rights)*. The neglect to assert one's rights or the acquiescence in the assertion or adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time (Mozley & Whiteley's Law Dictionary, 10th Ed., pg. 260)."*

Further, this Court in ***Sarath Hulangamuwa vs. Siriwardene, Principal Vishaka Vidyalaya, Colombo, and five others*** [1981 (1 Sri LR 275)], held that:

> *"Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the*

application… The laches of the petitioner must necessarily be a determining factor in deciding this application for Writ as the Court will not lend itself to making a stultifying order which cannot be carried out."

Accordingly, I hold that the petitioners are guilty of laches and therefore are not entitled to have and maintain this application and also to obtain the relief as prayed for.

10. The next objection for consideration is the availability of an alternate remedy. The 1st respondent has filed the certificate P-11 in the Magistrate's Court of Nugegoda and has instituted the case bearing No. 13263/23, as provided for by Section 8(1) of the Payment of Gratuity Act, No. 12 of 1983. The said certificate has been filed, and action has been so instituted on 21.02.2023. Upon issue of summons by the Magistrate, the petitioners, being respondents therein, have tendered their show cause by way of a statement of objections on 16.05.2023. The learned State Counsel on behalf of the respondents submitted that the petitioners are entitled and able to take up the issue that G.T.A. Service Station is not the employer before the Magistrate by way of a defence in their show cause and obtain equally effective relief if they so succeed. In this context, it is submitted that the petitioner has an alternate remedy and is not entitled to seek relief in this Court by way of writ. I will now consider this submission.

11. This application is preferred under Section 8 of the Payment of Gratuity Act, which reads as follows:

"(1) Where any default is made in the payment of any sum due as gratuity under this Act or where the gratuity due under this Act cannot be recovered under the provisions of section 4 or under the provisions of subsection (5) of section 17 of the Land Acquisition Act, the Commissioner may issue a certificate after such inquiry as he may deem necessary, stating the sum due as gratuity and the name and place of residence of the defaulter, to the Magistrate having jurisdiction in the division in which the estate or establishment is situated. The Magistrate shall, thereupon,

summon the defaulter before him to show cause why further proceedings for the recovery of the sum due as gratuity under this Act should not be taken against him and in default of sufficient cause being shown, the sum in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment and the provisions of subsection (1) of section 291 (except paragraphs (a), (d) and (i) thereof) of the Code of Criminal Procedure Act, No. 15 of 1979, relating to default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any decision which by the provisions of that subsection, he could have made at the time of imposing such sentence.

(2) The Commissioner's certificate shall be prima facie evidence that the amount due under this Act from the defaulter has been duly calculated, and that the amount is in default."

12. Gunasekera, J., in ***X (Employer) vs. Deputy Commissioners of Labour and others*** (1991) 1 SLR 222, considered the defences and matters that may be taken up and raised in showing cause before the Magistrate when an application is preferred under Section 8(1) of Act No. 12 of 1983. In that application, the learned Magistrate, after consideration of the submissions made on behalf of the petitioner and the respondent Deputy Commissioner of Labour, held that the petitioners were only entitled to show cause and establish:

"*(a) that the Petitioner was not the person named as the defaulter in the certificate,*
(b) that he has paid the amount specified in the certificate, and
(c) that the defaulter was not resident within the jurisdiction of the Magistrate's court."

Considering and reviewing this decision, Gunasekera, J., held as follows:

"Showing cause against certificates issued under the Payment of Gratuity Act No. 12 of 1983, S.8(1) is not limited to showing that the petitioner was not the person named as defaulter in the certificate, that he has paid the amount specified in the certificate and that he is not resident within the jurisdiction of the Magistrate's Court but also extends to showing that the sums

specified in the certificates are not due or that they have been incorrectly calculated because under S. 8(2) of the Act, the Commissioner's certificate is only prima facie evidence. It is open to the petitioner to displace the effect of the prima facie evidence by offering further evidence of an inconsistent or contradictory nature."

13. Accordingly, the petitioners are entitled in law and can raise and take up the defence that the petitioners acting under "G.T.A. Service Station" are not the employers of the 3rd, 4th, and 5th respondents in the matter 'before the Magistrate. 'Not being the employer' is also the main argument and position taken up by the petitioners in the present application too. To that extent, the petitioners do have an alternate remedy where the same defence can be taken up. This alternate remedy came into existence with the filing of the certificate P-11, and action was instituted before the Magistrate's Court under Section 8(1) of the Payment of Gratuity Act, No. 12 of 1983. This certainly is an equally effective remedy. In fact, the petitioners have themselves participated in the said proceedings in the Magistrate's Court and shown cause on 16.05.2023, which contains the same objection that the employer is not G.T.A. Service Station.

14. It is significant to observe that when the initial award was made, and notices P-4 and P-8 were communicated to the petitioners, they were entitled to prefer an application and seek this Court's intervention by invoking the writ jurisdiction. There was no alternate remedy. However, with the certificate being filed in the Magistrate's Court under Section 8(1) of the Payment of Gratuity Act, the alternate remedy came into existence. From that point onwards, the availability of an alternate remedy comes into being as an impediment for such petitioner to have and maintain an application for a writ. In the present instance, this application for writ has been preferred after the Magistrate's Court matter has been instituted and the petitioners have notice of the same. Accordingly, the petitioners have come to this Court having notice and knowing of the availability of the said alternate remedy.

15. The 1st respondent, being lawfully entitled to file the certificate and seek the assistance of the Magistrate to recover the said due sum, did so. Similarly, the petitioners are entitled to show cause, and the scope and extent, as held by Gunasekera, J., in ***X (Employer) vs. Deputy Commissioners of Labour and others*** (1991) 1 SLR 222, of the cause that may be shown provides an equally effective remedy.

16. It is settled law that the availability of an alternate remedy may disentitle the petitioner to relief by way of writ, where there is an equally effective remedy is available to the petitioner. Arjuna Obeyesekere, J., in ***Wickremasinghage Francis Kulasooriya vs. Office in Charge, Police Station Kirindiwela*** (CA Writ Application No. 3381/2011, decided on 22.10.2018), considered the above and held as follows:

> *"The question that arises for consideration in this application is what should a Court exercising Writ jurisdiction do when confronted with an argument that an alternative remedy is available to the Petitioner and that such alternative remedy should be resorted to?* ***This Court is of the view that a rigid principle cannot be laid down and that the appropriate decision would depend on the facts and circumstances of each case****. That said, where the statute provides a specific alternative remedy, a person dissatisfied with a decision of a statutory body should pursue that statutory remedy instead of invoking a discretionary remedy of this Court. That remedy should be equally effective and should be able to prevent an injustice that a Petitioner is seeking to avert. Furthermore,* ***if the Writ jurisdiction is invoked where an equally effective remedy is available, an explanation should be offered as to why that equally effective remedy has not been resorted to****."* [Emphasis added].

Accordingly, I hold that the petitioners have an effective alternate remedy and, as such, are not entitled in law to have and maintain this application. This is further compounded by the delay in view of which the Magistrate's Court proceedings were instituted.

17. The petitioners did raise the preliminary objection that the respondents' supporting affidavit is defective and thus have failed to comply with the

Court of Appeal (Appellate Procedure) Rules 1990 and thereby failed to submit a valid statement of objections. When this matter was taken up for argument, the learned Counsel for the petitioner reiterated the said objection. The basis of the alleged invalidity of the affidavit is the defect in the jurat, being the failure to correctly state the date. On a perusal of the affidavit annexed to the objections, it is apparent that the date in the jurat is defective, as the month is not stated therein. As I have already decided that the delay and alternate remedy disentitle the petitioner to the relief, deciding on this objection is now not required. For avoidance of any doubt, I would place on record that the issues of delay and alternate remedy were considered and dealt with solely based on the petitioner's pleadings and documents alone. The objections were not considered.

18. In the above circumstances, I hold that the petitioners are guilty of laches and also has an effective alternate remedy. Thus, the petitioners are not entitled in law to have and maintain this application and for relief as prayed for.

19. Accordingly, this application is refused and dismissed, subject to costs in a sum of Rs. 25,000.00 to be paid by each of the petitioners as State costs. The total State cost payable is therefore a sum of Rs. 50,000.00. The imposition of State costs is in view of the petitioners' delay and the abuse of process by instituting this application whilst the matter was also pending before the Magistrate's Court.

Application is accordingly dismissed.

JUDGE OF THE COURT OF APPEAL