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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Free Trade Zones & General Services Employees Union,
   Ananda Rajakaruna Mawatha,
   Colombo 10.

2. Mr. Anton Marcus,
   Joint Secretary,
   Free Trade Zone & General Services Employees Union,
   Ananda Rajakaruna Mawatha,
   Colombo 10.

CA (Writ) App. No. 123/2024

PETITIONERS

Vs.

1. H.K.K.A. Jayasundara,
   Commissioner General of Labour (Acting/Covering up),
   (Ceased to hold office)
   Department of Labour,
   Labour Secretariat,
   Kirula Road, Colombo 05.

1A. H.M.D.N.K. Wataliyadda,
Commissioner General of Labour,
Department of Labour,
Labour Secretariat,
"Mehewara Piyasa",
Colombo 05.

2. Assistant Commissioner of Labour,
6th Floor,
Colombo Central District,
Labour Office,
Labour Secretariat,
"Mehewara Piyasa",
Colombo 05.

3. N.M.Y. Thushari,
Commissioner Labour Standards,
Department of Labour,
Labour Secretariat,
"Mehewara Piyasa",
Colombo 05.

4. Ansell Lanka (Pvt) Ltd,
Biyagama,
Malwana.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

S.N. Mohamed with Laknath Senevirathna and Induka Senanayake for the Petitioner.

Sehan Soysa, S.S.C. for the 1st to 3rd Respondents.

Manoj Bandara with Thidas Herath and Anjalie Fonseka instructed by Sudath Perera Associates for the 4th Respondent.

Argued on: 06.11.2025

Delivered on: 01.06.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The 1st Petitioner is a trade union who claims that it has filed this Application for and on behalf of its members. However, the Petitioner claims that its members are not disclosed due to confidentiality and security reasons of the said membership. The 2nd Petitioner is its Joint Secretary.

The 1st Respondent is the Commissioner General of Labour, while the 2nd Respondent is the Commissioner of Labour, the 3rd Respondent is the Director of Labour, and the 4th Respondent is a company incorporated under the laws of Sri Lanka, capable of suing and being sued in its corporate name. Further, it is stated that the 4th Respondent is the employer under whom more than 3000 employees are employed, and the 1st Petitioner claims that most of the employees are its members.

Nevertheless, the Petitioners' complaint to this Court is that certain handpicked employees chosen by the 4th Respondent, the company as the employer (4th Respondent), have entered into a collective agreement which is gazetted and the same is marked as **P13**; the Petitioners claim that the said collective agreement contains certain terms that are detrimental to the employees, and therefore, is violative of the statutory provisions of Section 6 of the Industrial Disputes Act, No. 43 of 1950.

Thus, the Petitioners seek to challenge the same and seek a *Writ of Certiorari* to cancel the same by this Application. The Respondents have filed two sets of formal Objections separately; thereafter, this was argued before this Court on 06.11.2025; hence, this judgement.

Arguments

The Counsel for the Petitioners, Mr. Mohamed's first contention is that **P13** has not been signed by and between the employer and the trade union. It has been signed by a handpicked crowd of employees purported to be representatives of the employees; therefore, it is not a proper collective agreement since what is worded in **P13** is "*sewaka sabhawa*" instead of employees.

He further argued that what is stated in Clause 7(3) of **P13(a)** is not beneficial to the workmen; it is detrimental to them. Therefore, the Commissioner could not have been satisfied enough to publish it in the gazette; thus, it is bad in law.

On the other hand, Mr. Bandara, the Counsel for the 4th Respondent, argued that the Petitioners have failed to show the nexus between the employees and the Petitioners; therefore, this Application cannot be maintained. He argued that this Application should also fail because the Petitioners have failed to state whether this is public interest litigation or a personal interest litigation. In addition to that, he further argued that this Application cannot be maintained because the necessary parties are not before Court since the employees who have signed **P13** are not made parties to this Application.

His next argument is that **P13** has been signed by and between the employees and the employers; therefore, it is valid document.

Further, he argued that the collective agreement contained in **P13** is consistent with Section 62 of the Wages Board Ordinance.

The final argument of Mr. Bandara on what is stipulated in Clause 7(3) of **P13**, similar to what is stipulated in the Regulation under the Wages Board Ordinance, is that if an employee is working

on a Sunday, he is entitled to have the same benefits and overtime benefits as of an employee who is entitled to benefits granted for working on off-days.

Mr. De Soysa, the learned State Counsel, argued that he is neither sailing with the employer nor the Petitioners, and therefore, he is only appearing for the Commissioner, whose duty is to look after the wellbeing of the employees. Mr. Soysa argued that in terms of Section 62 of the Wages Ordinance, what is expected of the Commissioner is to create minimum conducive conditions for the employees to work, and ensure that the employers provide for that and not go below that.

Further, he argued that the Petitioners' so-called trade union does not have enough membership to prosecute this Application since out of 800 employees, now only 69 employees are its members, who have also left them now. In addition to that, he agreed with Mr. Bandara's argument that this Application cannot be maintained since the necessary parties who signed **P13** are not before Court as parties to this Application.

The Petitioners' position

The Petitioners claim that there had been a dispute between the Petitioners and the 4th Respondent with regard to;

(i) Effectually maintaining of unlawful rules of the system,

(ii) The non-payment of overtime wages to employees working during night shifts, and

(iii)The incorrect computation of wages.

Accordingly, the Petitioners assert that they had made an application to the 1st Respondent. Consequently, the 1st Respondent had gone into the matter and issued certain directions by the document marked as **P1(a)**; the 1st Respondent had made the application marked as **P1**, and the 3rd Respondent had issued **P1(a)**.

Further, the Petitioners claim that the payment of wages ought to be made in accordance with the stipulations contained in the document marked as **P1(b)**.

Thereafter, the Petitioners and the 2nd Respondent had correspondence, which are marked as **P2** and **P3** annexed to the Petition. Further, the Petitioners had correspondence with the 1st Respondent, which are marked as **P4**, **P5, P6(a),** and **P7**.

In addition to the above, the Petitioners claim that it had further correspondence with the 2nd Respondent, as reflected in the documents marked as **P9**, **P10,** and **P11**.

The Petitioners assert that to its great shock and dismay, a notice dated 09.10.2023 had been published by the 4th Respondent in the Gazette Extraordinary bearing No. 2335/25, a copy of which is marked as **P13**.

The Petitioners further assert that the computation of time, overtime, wages, and weekly holidays is inconsistent with the decisions contained in the Wages Board Regulation for the Rubber (Including Tyre Manufacturing and Rebuilding), Plastic and Petroleum Resin Products Manufacturing Trade industry, which is applicable to the matter in issue, as well as with the directives issued by the 1st to 3rd Respondents in the documents marked as **P1(a)** and **P1(b)**.

The Petitioners further claim that thereafter, a collective agreement had been entered into between certain employees and the 4th Respondent, which was published in the Gazette and marked as **P13**, and which had been approved by the other Respondents, which the Petitioners challenge in this Application.

The Respondents' Objections

The 1st to 3rd Respondents have filed their respective Objections separately. According to them, the Petitioners have instituted the above-styled application challenging the gazetted collective agreement entered into between the 4th Respondent and the representative of its employees, and which has been gazetted as per the law; therefore, without disclosing the correct factual position, the Petitioners have instituted the above Application. Thus, the Petitioners' Application cannot be maintained, and as such, the Petitioners' Application needs to be dismissed *in limine* for the non-production of certain material documents which the 4th Respondent has disclosed marked a document **4R(1)**.

In addition to that, it is their position that the collective agreement that they had entered into between the 4th Respondent and its employees under the supervision of the 1st to 3rd Respondents in accordance with the law.

When it comes to the Statement of Objections of the 4th Respondent, it has raised two preliminary objections in addition to the objections based on merits based on annexed the documents marked as **R1** to **R45** in support of their position.

It is the 4th Respondent's position that the Petitioner cannot invoke the jurisdiction of this Court since it is not a party to the document marked as **P13**, the collective agreement entered into between the 4th Respondent and the representatives of the 4th Respondent employees' trade union; in addition to that, the necessary parties are not cited as respondents to this Application.

Secondly, the Petitioners have not divulged the fact that it does not command any authority deriving from the employees since no document is annexed to the Petition to establish the number of members of their union; nevertheless, the 4th Respondent has marked a document marked as

4R(1) to establish that more than 85% of its employees are members of a trade union called "*Ansell Api*", whose representatives are only signatories to the collective agreement marked as **P13**. Therefore, the Petitioners are guilty of misrepresentation.

In addition to that, there are certain allegations against the Petitioners to state that the Petitioners had tried to create a chaotic situation within the premises of the factory of the 4th Respondent, and thus, tried to gain an advantage without even commanding any authority over the employees. Accordingly, by the Objections, the 4th Respondent has sought a dismissal of this Application.

Now I will consider the collective agreement gazetted in **P13**, to ascertain whether it is detrimental to the employees of the 4th Respondent.

In this case, the Petitioners contend that the 4th Respondent and the trade union, having entered into the agreement which was admitted by the 1st to 3rd Respondents and published in the Gazette notification marked as **P13**, is violative of Regulation 24 of the Wages Board Regulations. Now I will consider the said Regulation 24 along with the terms of the agreement marked as **P13**. According to Clause 7 of Regulation 24, it reads as thus;

> *"IV කොටස:*
>
> *සතියේ නිවාඩු දිනය (24 වැනි වගන්තිය) සෑම සේවයෝජකයෙක්ම තමා යටතේ වැඩ කරන සෑම සේවකයකුටම ඉරිදා දිනය සුමාන නිවාඩු දිනයක් වශයෙන් දිය යුතුය.*
>
> *එසේ නමුදු ඉරිදා දිනයකදී වුවද පහත දැක්වෙන කොන්දේසි වලට යටත්ව සේවා යෝජකයා විසින් යම් සේවකයෙක් සේවයේ යෙදවිය හැකිය.*
>
> *01. එම ඉරිදා දිනයට ඉක්බිතිව එළඹෙන දින හය ඇතුලත දිනයක් සේවකයාට නිවාඩු දිය යුතුය.*
>
> *තවද, ඉරිදා දිනයකදී කරන ලද වැඩ සම්බන්ධයෙන්*

(අ) මාසික වේතන ලබන සේවකයින් සඳහා එසේ වැඩ කල පළමු පැය 09 සඳහා (කෑම පැය ද ඇතුළුව) ඔවුන්ගේ මාසික වම වේතනය 30 න් බෙදා ලැබෙන ප්‍රමාණය නුව 50% කින් වැඩි වූ ප්‍රමාණයක් සහ

(ආ) ඊට පසුව වැඩ කරන එක් එක් පැයක් සඳහා (වම දෛනික කාල වැටුප් ප්‍රමාණය 8න් බෙදා නිශ්චය කරගත් හෝ වම මාසික ප්‍රමාණය 240න් බෙදා නිශ්චය කරගත්) පයකට ගැනෙන වම ප්‍රමාණය 50% කින් වැඩි වූ ප්‍රමාණයක් ද, නුක්‍රමික වශයෙන් එම සේවකයාට ගෙවිය යුතුය.''

Thereafter, on a careful analysis of the above regulations, the following position emerges. First, if a workman is required to work on a Sunday, such workman is entitled to a holiday within the succeeding six days, in lieu of the Sunday he has worked.

However, when it comes to payment for work performed on a Sunday, it is also provided that for the first 9 hours, which includes the lunch and tea interval, payment shall be at 150% per hour of the normal wages, namely daily wages plus 50%. In addition to that, if additional hours are worked, such hours shall be paid at 200% per day of the normal wages.

Now I will consider how the essence of the above is encapsulated in the document marked **P13**, which reads thus;

''7.3 ඒ අනුව සතියක් තුළ පැය 12 බැගින් වූ සේවාමුර 5ක් සේවයේ යෙදීමට සේවකයින් එකඟවන අතර එම එක් එක් සේවා මුරයේ මුල් පැය 8 ඉක්ම වූ (කෑම පැය හැර) සෑම පැයක් සඳහාම අතිකාල ලබාදීමට සේවයෝජක එකඟ වේ. සාමාන්‍ය සේවා මුරය පෙ.ව. 6.00 සිට ප.ව. 6.00 දක්වා වන අතර රාත්‍රී සේවා මුරය ප.ව. 6.00ට ආරම්භ වී පසුදා පෙ.ව. 6.00 ට අවසන් කිරීමට දෙපාර්ශ්වය එකඟ වේ. එමෙන් ම සාමාන්‍ය මුර සේවයේ එනමී පෙ.ව. 8.30 සිට ප.ව. 5.00 දක්වා සේවයේ යෙදෙන සේවකයන් සඳහාද ඉහත ක්‍රමවේදයට අතිකාල ලබාදීමට සේවායෝජක එකඟ වේ.

7.4 ජාත්‍යන්තර නීති (ILO) වශයෙන් යම් යම් කාලපරිච්ඡේදවල දියත් කරන්නා වූ නීතිරීති වලට යටත්ව කටයුතු කිරීමට දෙපාර්ශ්වයම එකඟ වේ. (CSR)

7.5 තම සති නිවාඩු දිනයේ (Off day) සේවය යෙදෙන යම් සේවකයෙකු වෙනුවෙන් එම සතිය තුළ විකල්ප දිනයක් සුති නිවාඩුව ලෙස ලබාදීමටත් එසේ සති නිවාඩු දිනයක සේවයේ යෙදෙන සේවකයෙකු වෙනුවෙන් සාමාන්‍ය අතිකාල ප්‍රමාණය මෙන් දෙගුණයක ප්‍රමාණයක් ගෙවීමට සේවායෝජක එකඟ වේ. එමෙන්ම නිෂ්පාදන ක්‍රියාවලියේ සිදුවන්නා වූ වෙනස්කම් මත දැනට ක්‍රියාත්මක වන මෙම ක්‍රම වේදය යම් වෙනස් කිරීමක් සිදුවන්නේ නම් ඒ සම්බන්ධයෙන් සියලුම සේවක පිරිස් දැනුවත් කිරීමෙන් අනතුරුව එම වෙනස්කම් සිදුකිරීමට සේවායෝජක එකඟ වේ.''

For the purpose of further clarity, I will now compare the relevant provisions of the regulation and the collective agreement by the following table;

If a workman works on a Sunday (Off day):	
Regulation 24 of the Wages Board	**Clause 7 of the Collective Agreement (P13)**
Grant one alternative weekly holiday within the succeeding six days	Grant two alternative holiday as the off day/weekly holiday.
Make payments calculated as follows - • The regular daily wage and 50% of the regular wage for the first nine hours • The regular hourly wage and 100% of the regular hourly wage for the additional hours after the first nine hours.	Make payments twice the regular overtime rate for such day of work.

In addition to that, under the terms of the collective agreement, apart from the holiday in lieu of which the workman is entitled to a holiday on any weekday of the succeeding week, the workman is further entitled to one additional day as a holiday. Therefore, in effect, if a workman works on

a Sunday, he is entitled to two days' leave. This is clearly a benefit conferred on the workman and not on the employer. Accordingly, it is not violative of Regulation 24; rather, it is consistent with and in accordance with the said Regulation.

In addition to that according to the Clause 7(3) of the collective agreement, the payment is also made to a workman as required by the Regulation 24 of the Wages Board Ordinance. In addition to that, it is further agreed by and between the parties that the conditions and rules will be made during the working hours to meet the International Labour Organisation (ILO) standards, which is something more than what is expected by the Regulation 24 of the Wages Board Ordinance; therefore, the Petitioners' contention on merits is baseless.

The collective agreement reflected in **P13** is consistent with Section 62 of the Wages Board Ordinance; in addition to that, the same is consistent with Section 6 of the Industrial Dispute Act, which reads thus;

> *"6. Where a collective agreement in respect of any industry in any district has been reduced to writing and signed by both the parties to the agreement or by the representative of each party thereto, any such party or any trade union or employer constituting or included in any such party may transmit the agreement to the Commissioner and the Commissioner shall forthwith cause the agreement to be published in the Gazette:*
>
> *Provided that where such agreement contains provisions relating to the terms and conditions of employment of any workmen in such industry, the Commissioner shall not cause such agreement to be so published unless he is satisfied that those terms and conditions are not less favourable than those applicable to any other workmen in the same or a similar industry in such district*

For the purpose of this section, terms and conditions of employment set out in any other collective agreement shall not be deemed to be applicable to any workmen, unless the agreement has been published in the Gazette under this section and is for the time being in force."

The 1st to 3rd Respondents has satisfied the approved provisions of the said collective agreement, as experts who are appointed to look into the matters in relation to the welfare of the workers; thus, no third party (as the Petitioner) who has nothing to do with the welfare of the workmen, except for collecting their own revenue from workmen which it can do, as alleged, by creating disruption in the place of work, can question it.

Preliminary matters

In addition to that, I will now proceed to consider the preliminary matters raised by both sets of Respondents.

The Petitioners seek the intervention of this Court to quash **P13** on the basis that the Petitioner trade union, whose members constitute more than 50% of the employees of the 4th Respondent company and which claims to have bargaining power with the employer, contends that if a collective agreement is to be entered into, it should have been entered into between the Petitioners and the 4th Respondent, and not with any other representatives of employees. However, the Petitioners have failed to establish that it has even 40% membership among the employees of the 4th Respondent.

As opposed to that, the 4th Respondent has produced the document marked as **4R(1)** to establish that more than 85% of the employees of the 4th Respondent establishment are members of the trade

union known as "*Ansell Api*", and that the representatives of that union have duly acted on behalf of its membership.

In addition to that, the 4th Respondent has annexed the names and signatures of members of the "*Ansell Api*" trade union to establish that more than 85% of the employees of the 4th Respondent are members of the said trade union.

Further, the 4th Respondent has established by documentary evidence that the said union has duly elected its representatives, with whom the 4th Respondent has entered into a collective agreement on behalf of the employees and the employer.

The said collective agreement had been accepted by the 1st to 3rd Respondents, being government officers, upon due satisfaction and not on any extraneous consideration. Thereafter, they caused the same to be published in the Gazette as a legally recognised collective agreement. In fact, the said collective agreement is beneficial to the workmen and not to any unscrupulous trade union attempting to make inroads into the company and thereby create unconducive conditions and operational difficulties for the management. It is also noted that such conduct by certain trade unions has, in some instances, adversely affected economic stability, and there is material to substantiate the same. Therefore, it is my view that the agreement published in the Gazette marked as **P13** is a legally valid document, not in violation of Regulation 24 made under the Wages Board Ordinance, but rather consistent with the said Regulations. Accordingly, the application of the Petitioners is baseless and frivolous.

Further, I wish to consider one more argument advanced by the Respondents. Though the Petitioners have referred to several documents, including documents from **P1** to **P15**, the Petitioners have failed to produce document marked **4R(1)**, which clearly indicates the

membership composition of the trade union "*Ansell Api*", a party to the collective agreement marked as **P13**. Therefore, as correctly submitted by learned Counsel for both sets of Respondents, the Petitioners have failed to place material facts before this Court, and such omission amounts to a misrepresentation.

Accordingly, this Application is also liable to be dismissed on that basis. As stated above, the Petitioners have failed to establish its *locus standi* to enter into or challenge any collective agreement with the 4th Respondent, as it does not command sufficient membership among the employees of the 4th Respondent.

In addition to that, as alleged by the 4th Respondent, that the Petitioner made several attempts to create disputes unjustifiably to create a chaotic situations within the premises which is stipulated in paragraph 1(e) of the Statement of Objections of the 4th Respondent, thereby causing hardship to the management as well as employees and creating an adverse atmosphere for the smooth functioning of the company. For further clarity I reproduce the paragraph 1(e) of the Statement of Objections of the 4th Respondent;

> *"The 1st and 2nd Petitioners are known to be disruptive unions and activist who create disputes unjustifiably in order to assert their position as bargaining agents to secure check off. This is the business model of the 1st and the 2nd Respondents. To this end, they instigate purported industrial disputes and cause disruption within business establishments."*

There is only a mere denial of the same by the counter affidavits, in fact, I wish to observe that the Petitioners have stated in Paragraph 8 of the Petition that the 1st Petitioner represented the rights of some of the employees; however, the number of employees is not indicated as such.

In addition to that, even when the learned Counsel, Mr. Mohamed stated in his submissions referring to the fact that due to confidentiality and security reasons it will not disclose its membership, that itself indicates how *mala fide* the Petitioners are.

If such attempts were successful, it may even lead to the closure of the company, which provides more than 3000 employment opportunities and contributes foreign exchange (as asserted by the 4th Respondent), which Sri Lanka is presently in need of. If such elements are permitted to engage in these types of activities, even by abusing the process of court, the same should not be condoned, and such conduct must be discouraged.

Conclusion

For the reasons adumbrated above, this Application is dismissed since it is a frivolous application made by the so-called Trade Union without any basis; accordingly, I decide to impose cost of Rs. 210,000/- (Two Hundred and Ten Thousand Rupees), out of which Rs. 105,000/- (One Hundred and Five Thousand Rupees) shall be payable to the 1st to 3rd Respondents, and Rs. 105,000/- (One Hundred and Five Thousand Rupees) shall be payable to the 4th Respondent.

JUDGE OF THE COURT OF APPEAL