

**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.*

Wijeya Newspapers Limited
No. 08, Hunupitiya Cross Road,
Colombo 02.

CA (Writ) App. No. 572/2025

PETITIONER

Vs.

1. The Commissioner General of
Labour,
Labour Secretariat,
Narahenpita, Colombo 05.
2. J.M.P Karunaratne,
Commissioner of Labour (Special
Investigations),
Investigations Section,
12th Special Floor,
Department of Labour,
Narahenpita, Colombo 05.
3. W.P.M.P. Wijewardane,
Labour Officer,
Special Investigations Section,
12th Floor, Department of Labour,
Narahenpita, Colombo 05.

4. W.K Patrick Marx,
No. 46, Kapalakanda Road, Ja-Ela.

RESPONDENTS

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

Counsel:

Manoli Jinadasa with Nilushi Dewpura instructed by Rasika Wellappili for the
Petitioner.

R. Aluwihare, S.C., for the Respondents.

Argued on: 04.05.2026

Delivered on: 17.06.2026

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

Judgement

Introduction

The Petitioner challenges the determination of the Commissioner of Labour to recover the Petitioner's failure to contribute to the gratuity on the basis that there existed an employer-employee relationship between the Petitioner and the 4th Respondent, since the 4th Respondent functioned and remained as a freelance contributor prior to 2020 in relation to the daily and weekend paper publications published by the Petitioner.

The 1st Respondent is the Commissioner General of Labour, while the 2nd Respondent is the Commissioner of Labour, and the 3rd Respondent is an officer of the 2nd Respondent.

After the issuance of formal notice, this was argued before me on 04.05.2026; hence, this judgement.

The Petitioner's position

The Petitioner is a body incorporated under the Companies Act No. 7 of 2007, and its Certificate of Incorporation is marked as **P1** annexed to the Petition. The Petitioner asserts that it is engaged in and carries on the business of *inter alia* the publication of daily and weekend newspapers, which include Lankadeepa, Sunday Times, Daily Financial Times, Daily Mirror, and Hi Magazine.

The Petitioner further claims that it has a large staff comprising of over 1,622 employees permanently attached to it. In addition, it claims that there are 643 freelance contributors associated with the Petitioner company, and that the 4th Respondent, who functioned as a freelance correspondent before 2020, used to supply news items as a freelance contributor.

According to the Petitioner, he was paid on news item basis depending on the news items that he supplied.

However, after 2020, the 4th Respondent ceased to supply such news during the COVID period. Therefore, after he ceased to supply news, no payments were made to him.

Subsequently, the 4th Respondent had made a complaint to the Human Rights Commission for the failure to contribute to the gratuity by the Petitioner. Thereafter, the Human Rights Commissioner had forwarded the same to the 1st Respondent, who had referred the matter to the 2nd Respondent for inquiry. The 2nd Respondent by notice marked as **P2** annexed to the Petition, has called upon the Petitioner to come for an inquiry.

In addition to that, the Petitioner has marked and annexed to the Petition **P2(a)** to **P2(c)**, which are the relevant documents submitted by the 4th Respondent to the Human Rights Commission along with the affidavits marked as **P3**. Further, by **P4**, the Petitioner has been asked to come for a subsequent inquiry.

The Petitioner further annexed the document marked as **P5**, by which the 4th Respondent had made a complaint to the Labour Tribunal under Section 31 of the Industrial Disputes Act; the Petitioner has marked the answer to the said application as **P5(a)**, and in addition to that, the Petitioner has marked **P5(b)**, which is the replication filed by the 4th Respondent in that Labour Tribunal application.

Thereafter, the Labour Tribunal has decided that the application is prescribed and dismissed the same. However, further on an application made by the 4th Respondent to excuse his delay by reason of COVID-19, it has called for a report. However, it remained dismissed without taking further steps.

Be it as it is, thereafter, the 2nd Respondent has gone onto decide upon the application of the 4th Respondent, and after inquiry, had decided as reflected in the document marked as **P13** annexed to the Petition, that the Petitioner has to pay Rs. 88,452/- (Eighty-Eight Thousand Four Hundred and Fifty-Two Rupees) as gratuity, including the surcharge. The Petitioner challenges the same in this Application.

However, after the issuance of formal notice, the Respondents have not appeared before this Court; therefore, this was argued before me without any objections.

The following arguments were advanced by the Petitioner on 04.05.2026.

Arguments

In this case, the Petitioner challenges the document marked as **P13**, which is the letter sent to the Petitioner by the 2nd Respondent requiring him to pay the EPF contribution on the basis of the 4th Respondent's complaint as an employee of the Petitioner company.

The Petitioner so challenges the said order and decision of the 1st to 3rd Respondents on the following grounds, as submitted in the arguments;

- (1) The 1st to 3rd Respondents have failed to follow the rules of natural justice as the Petitioner was not given a fair and ample opportunity to present its defence, and the Petitioner was not properly informed with the regards to the first notice, on the type of complaint had been made against it as no complaint was attached to the said notice.
- (2) The 4th Respondent has failed to establish that there was an employer-employee relationship between the Petitioner and the 4th Respondent; therefore, the 1st to 3rd Respondents have failed to appreciate that and as such, came to the wrong conclusion that there existed an employer-employee relationship between the Petitioner and 4th

Respondent and that the Petitioner failed to contribute its part to the 4th Respondent's EPF.

- (3) The said conclusion arrived at and the decision taken by the 1st to 3rd Respondents as reflected in the documents marked as **P13** is irrational, capricious, against the evidence, and have not considered the due process of law.

Now I will consider them one by one.

The 1st to 3rd Respondents have failed to follow the rules of natural justice

The Petitioner's first complaint is based on the fact that the Petitioner was not given an opportunity to present its defence.

Initially, the Petitioner had been asked to come to the inquiry by the document marked as **P6**; along with that, though the said notice refers to a complaint made by the 4th Respondent for the non-contribution of the gratuity by the Petitioner, the Petitioner asserts that no such complaint was attached to the notice. Therefore, the Petitioner was unaware of the nature of the complaint and the nature of inquiry to be embarked upon by the 1st to 3rd Respondents.

Such assertions have never been denied by the Respondents by filing Objections of this case; therefore, the assertions made by way of the Petition, supported by affidavits, remains as proven fact as per the case of *Edrick De Silva v. L. Chandradasa De Silva*.¹

In addition to that, the Petitioner further alleges that it was not given a fair opportunity to make its defence.

The 3rd Respondent conducted the inquiry into the allegations made by the 4th Respondent on the basis that the Petitioner had failed to contribute its part to the gratuity. The Appellant's

¹ 70 NLR 169.

complaint is that it had not been given an opportunity to present its defence, particularly when it filed its written submissions based on legal principles in relation to the application made by the 4th Respondent to the 1st to 3rd Respondents. Thus, the Petitioner was deprived of the opportunity of presenting its defence; therefore, the 3rd Respondent himself has avoided considering the relevant defence taken by the Petitioner. As such, there was no due process or procedure followed by the 3rd Respondent at arriving at its conclusion, and therefore, the rules of natural justice and the due process of law has not been followed.

Therefore, the conclusions arrived at and the decisions taken by the 1st to 3rd Respondents in deciding that the 4th Respondent was an employee working under the Petitioner company, and that the Petitioner is liable to pay the amount concerned as EPF as its contribution in favour of the 4th Respondent, have erroneously been taken, and thus, is irrational and capricious.

The 4th Respondent was not an employee

The next matter to be considered is whether the 4th Respondent had established that there was an employer-employee relationship that existed between the Petitioner and the 4th Respondent.

To further buttress my view, I rely on the decision of Justice Arjuna Obeyesekere in the case of *Splendour Media (Pvt) Limited v. The Commissioner General of Labour*,² in which His Lordship stated that the following guidelines should be followed in such an inquiry;

“Applying the aforementioned judicial dicta, it is the view of this Court that whenever a complaint is received that an employer has not complied with its obligations contained in the EPF Act, the Department of Labour must:

² CA (WRT) Application No. 102/2017 (CA Minutes 01.11.2019).

(a) inform the employer of the nature of the complaint of non-compliance made against it, and where available, make available copies of the complaint to the employer;

(b) afford the employer an opportunity to respond and clarify matters relating to such complaint;

(c) afford the employee an opportunity of responding to the position of the employer.

This 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 an 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.” [Emphasis is mine]

By the time the application was made in 2024, the 4th Respondent had already passed eighty (80) years of age. His complaint is that he was an employee under the Petitioner from 2000 to 2020. Though the 4th Respondent appears to have placed certain evidence of payment of certain fees that were supposed to have been paid by the Petitioner for the contributions made by the 4th Respondent, the 1st to 3rd Respondents, particularly the 3rd Respondent, have failed to appreciate that the 4th Respondent had not placed before them the evidence of a regular monthly salary.

In addition to that, it is the Petitioner's position before the 3rd Respondent at the inquiry, that the 4th Respondent had been paid only on news item basis, and there was fixed monthly salary paid. Such payment was made initially by depositing money to the bank account of the 4th Respondent for the purpose of convenience, and later by an online transfer. However, this depended on the news items supplied and subject to the publication of such news item by the Petitioner in its publications, which the 3rd Respondent had failed to consider and appreciate, and therefore, at arriving at the conclusion that there existed an employer-employee relationship between the Petitioner and the 4th Respondent, and that the 4th Respondent was paid a monthly salary, is erroneously taken.

In addition to that, the 3rd Respondent has failed to consider whether the Petitioner was in the possession of an employment control of the 4th Respondent, whether the 4th Respondent had regularly attended to his work in the office or any place of work relating to the Petitioner, and what sort of control over the 4th Respondent was exercised by the Petitioner, when the 3rd Respondent arrived at its conclusion that there existed an employer-employee relationship between the Petitioner and the 4th Respondent. Thus, the 3rd Respondent, in arriving at the said conclusion, has erred in fact and in law, and as such, it is irrational and capricious.

Conclusion

For the reasons adumbrated above, a *Writ of Certiorari* is issued as prayed for in the prayer (b) of the Petition, quashing the order marked as **P13**.

JUDGE OF THE COURT OF APPEAL