

**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. 892/2025

PETITIONER

Vs.

1. The Commissioner General of
Labour,
Labour Secretariat,
Narahenpita, Colombo 05.
2. G.C.P. Kumara,
Assistant Commissioner of
Labour, Colombo South District
Labour Office, Department of
Labour, 6th Floor,
No.56, Kirula Road, Narahenpita,
Colombo 05.
3. Imali Kularathne,
Labour Officer,
Colombo South District Labour
Office, Department of Labour,
6th Floor, No.56, Kirula Road,
Narahenpita, Colombo 05.

3A. G A Lionel, Colombo South District
Labour Office, Department
of Labour, 6th Floor, No.56,
Kirula Road, 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

Judgement

Introduction

The Petitioner challenges the determination of the Commissioner of Labour to recover the Petitioner's failure to contribute to the Employee Provident Fund (EPF) 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 Petitioner's position

The Petitioner is a body incorporated under the laws of 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 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 and published.

In addition to that, the Petitioner asserts that 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 made a complaint to the 1st Respondent

claiming that the Petitioner had failed to make contributions to the EPF to which the 4th Respondent was entitled.

The 4th Respondent had claimed EPF on the basis that he was a permanent employee. Consequently, the 3rd Respondent sent a notice to the Petitioner dated 06.09.2024, which is marked and annexed to the Petition as **P2**, directing the Petitioner to appear for an inquiry.

Further, the Petitioner asserts since it was not a suitable date for the Petitioner, upon informing the same, the 3rd Respondent rescheduled the inquiry and issued a further notice marked as **P3**; thereafter, as required by the said notice, the Petitioner participated in the inquiry. At the inquiry, the Petitioner took up the position that the 4th Respondent was never a permanent employee attached to the Petitioner company and, therefore, there was no employer-employee relationship between the Petitioner and the 4th Respondent. As such, the Petitioner denied any liability to pay EPF.

The Petitioner contends that after three days of inquiry, and despite the Petitioner having submitted written submissions as well, the 3rd Respondent decided that the Petitioner was liable to pay Rs. 561,609/- (Five Hundred and Sixty-One Thousand Six Hundred and Nine Rupees) as its contribution to the EPF to which the 4th Respondent was entitled and directed the Petitioner to pay the same. Thereafter, the Petitioner appealed as provided by law; however, the appeal was also turned down. Consequently, the Petitioner has sought the intervention of this Court.

It is the Petitioner's position that it never employed the 4th Respondent as an employee of the Petitioner and that there was no employer-employee relationship between the two parties. As such, without considering the evidence and without applying the relevant tests necessary to determine whether an employer-employee relationship existed, the 1st to 3rd Respondents

violated the rules of natural justice and arrived at an irrational decision. The Petitioner further alleges that the rules of natural justice have been violated.

The Petitioner asserts that in the meantime, the 4th Respondent had filed an application before the Labour Tribunal on the basis that his employment had been wrongfully terminated. After the filing of the answer and upon inquiry, the application was dismissed by the Labour Tribunal. Against the said dismissal, the 4th Respondent had not preferred an appeal. To establish this fact, the Petitioner has annexed the application as **P5(a)**, the answer as **P5(b)**, and the order on the preliminary matter as **P5(c)**. According to the Petitioner, it has been decided therein that the 4th Respondent was not a permanent employee of the Petitioner. Further, the 4th Respondent had also made the complaint against the Petitioner to the 1st Respondent claiming EPF.

Thereafter, the 3rd Respondent made the order marked **P6** requiring the Petitioner to pay the EPF contribution, and the same was communicated to the Petitioner by **P7**. Subsequently, the Petitioner appealed to the 1st Respondent, who is the Commissioner, in terms of Section 29 of the EPF Act, No. 15 of 1958.

However, the 1st Respondent turned down the said appeal on the basis that there was no Appeal Board constituted; the said communication is marked as **P8**, and the Petitioner challenges the same.

Thereafter, the final notice marked as **P9** was published and gazetted. In addition, a Magistrate's Court action was instituted by the 1st Respondent against the Petitioner, which is marked as **P18**. Therefore, in this Application, the Petitioner challenges **P6, P8, and P18**.

The Respondents never appeared, and no objections were filed. Accordingly, this matter was taken up *ex parte*.

Arguments

In this case, the Petitioner challenges three documents; namely, **P6**, which is the notice sent to the Petitioner by the 3rd Respondent requiring him to come for the inquiry on the basis of the 4th Respondent's complaint as an employee of the Petitioner company, the final notice of payment which is marked as P8 and issued by the 2nd Respondent, and **P18** which is the report filed in the Magistrate's Court for the recovery of EPF, including the surcharge, by the 1st Respondent.

The Petitioner so challenges the said orders and decisions 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 conclusions arrived at and the decisions taken by the 1st to 3rd Respondents as reflected in the documents marked as **P6**, **P8**, and **P18** are 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 **P2**; along with that, though the said notice refers to a complaint made by the 4th Respondent for the non-contribution of the EPF 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 who 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 EPF, had not given the Petitioner 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

¹ 70 NLR 169.

Respondent at arriving at its conclusion, and thus, 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 without following a proper procedure. Therefore, it amounts to a violation of the rules of natural justice.

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:

- (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

² CA (Writ) Application 102/2017 (CA Minutes 01.11.2019)

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]

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.

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 no 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, in 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 the foregoing, the 3rd Respondent has failed to consider the existence of an employer–employee relationship between the Petitioner and the 4th Respondent by applying the tests now recognized as applicable for determining such a relationship, namely the ‘control test’, the ‘integration test’, the ‘economic reality test’, or any other relevant legal test.³

Further, the 3rd Respondent had failed to consider 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 certificate contained in **P18**, and the order marked **P6**.

JUDGE OF THE COURT OF APPEAL

³ *Uber BV and Others v. Aslam and Others* [2021] UKSC 5.