

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of *Certiorari* and
Mandamus.

Court of Appeal Case No:
CA/WRIT/286/2022

Balangoda Plantations PLC,
No. 110, Norris Canal,
Colombo 10.

PETITIONER

Vs.

1. B.K. Prabath Chandrakeerthi,
Commissioner General of Labour,
Labour Secretariat,
PO Box 575,
Colombo 05.
2. S.L.T.N. Damseth,
Assistant Commissioner of Labour,
District Labour Office – Ratnapura,
Ratnapura.
3. Rajasinghe Wasala Mudiyanse
Ralahamilage Athula Indranath
Bandara Ranasinghe,
No. 85, Isuru Pedesa,
Paradise, Kuruwita.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Shivan Coorey with Damithu Surasena instructed by Sajuni Seneviratne
for the Petitioner.
Shellomy Gunaratne, S.C. for the 1st, 2nd and 4th Respondents.

Argued on: 10.06.2026.

Written Submissions: For the Petitioner on 28.07.2026.
For the 1st and 2nd Respondents on 19.06.2026.

Decided on: 25.09.2026.

Mayadunne Corea J

The Petitioner in this application sought, *inter alia*, the following reliefs:

“b) *Grant an order in the nature of a Writ of Certiorari quashing the award dated 29th November 2021 annexed hereto marked P27*”

The facts of this case, in brief, are as follows. The Petitioner company is engaged in the cultivation, manufacture, and sale of tea and rubber on estates leased from the Sri Lanka State Plantation Corporation and the Janatha Estates Development Board. The 3rd Respondent was employed by the Petitioner company as an Assistant Superintendent and subsequently as a Superintendent at several of the Petitioner’s estates. It is alleged that the Petitioner has received complains about the fraudulent acts of the 3rd Respondent.

It is further alleged that, the Petitioner commenced an investigation into fraudulent practices and the misappropriation of funds allegedly committed by the 3rd Respondent, following which the 3rd Respondent tendered his resignation. In view of the pending investigations, the Petitioner refused to accept the said resignation. Thereafter, the 3rd Respondent failed to report for work.

Upon completion of the investigation, the report revealed evidence of illegal activities on the part of the 3rd Respondent. Consequently, the Petitioner issued a letter of show cause setting out seven charges against the 3rd Respondent. The Petitioner conducted a

domestic inquiry and served notice thereof on the 3rd Respondent. Despite several notices being issued to the 3rd Respondent, he failed to appear at the inquiry, which was accordingly conducted *ex parte*. The inquiring officer found the 3rd Respondent guilty of all seven charges preferred against him. Consequently, the Petitioner terminated the services of the 3rd Respondent by letter dated 13.10.2021.

The 3rd Respondent lodged a complaint with the 2nd Respondent against the Petitioner in respect of the non-payment of gratuity. Following an inquiry, the 1st and 2nd Respondents ordered the Petitioner to pay a sum of Rs. 2,061,800 to the 3rd Respondent by letter dated 29.11.2021 (P27). Being aggrieved by the aforesaid decision, the Petitioner has filed the present application.

The Petitioner's contention

The Petitioner challenged the acts of the Respondents on the following grounds:

- The 1st and 2nd Respondents had acted in excess of jurisdiction.
- The 1st and 2nd Respondents have acted contrary to the provisions of the Industrial Disputes Act and the Payment of Gratuity Act.
- The 1st and 2nd Respondents have acted contrary to the rules of natural justice.
- The Petitioner has acted in accordance with section 13 of the Payment of Gratuity Act.
- The Petitioner terminated the services of the 3rd Respondent for reasons of fraud, misappropriation of funds, wilful damage to property and causing loss to the Petitioner company.
- The 1st and 2nd Respondents have acted *ultra vires*, unlawfully, irrationally, arbitrarily, and capriciously.

The Petitioner confined his grounds seeking the reliefs prayed to two main contentions namely; the 1st and 2nd Respondents have no jurisdiction to entertain or hear the 3rd Respondents application on non-payment of gratuity and no reasons have been given for the decision.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner is guilty of laches.
- The Petitioner's application is frivolous, vexatious and futile.
- The Petitioner has suppressed and misrepresented material facts.
- The Petitioner has failed to name necessary parties.

Analysis

It is common ground that the 3rd Respondent had worked with the Petitioner in various capacities and had last worked as an estate superintendent. To obtain a better understanding, it is pertinent to consider the sequence of events as occurred. The Petitioner alleges that a complaint was received and it had commenced an investigation against the 3rd Respondent.

- The complaint tendered is dated 02.03.2020 (P9a).
- The Petitioner submits that an investigation had commenced immediately (P9b).
- The 3rd Respondent had tendered his resignation from the position of superintendent dated 30.06.2020 (P10) to be effective from 31.07.2020. In the said letter, the Petitioner has informed that, in view of the requirement to give one month's notice, he is giving the one month's notice to be operative from 01.07.2020 (P10).
- On 03.07.2020, the Petitioner had replied to the 3rd Respondent stating that his resignation letter is not accepted (P11).
- On 22.09.2020, on the request of the 3rd Respondent to withdraw his ETF contributions, the Petitioner had sent a letter stating that the 3rd Respondent had ceased his services with effect from 31.07.2020. Upon inquiry by this court the Respondents later clarified that this letter had been issued, to enable the 3rd Respondent to withdraw the ETF and also to inform the ETF board that since the 3rd Respondent was not reporting to work, the Petitioner would not contribute any remittance. However, it is evident that the Petitioner had not contributed to the statutory payments due from 31.7.2020 on the basis the employer employee relationship has ceased.
- On 11.03.2021, the 3rd Respondent had complained to the Petitioner of non-payment of his gratuity (R1). Interestingly, in the complaint, the 3rd Respondent had submitted that for a period of 7 months, the 3rd Respondent had ceased to work for the Petitioner. The said letter does not state whether he has resigned or whether his services have been terminated. However, as per the letter, it appears

as though the 3rd Respondent has ceased to work for the Petitioner from August 2020.

- On 07.04.2021, inquiry before the Commissioner General of Labour who will hereinafter be called the CGL, on non-payment of gratuity had commenced (P26). It is pertinent to note that none of the parties have tendered the proceedings before the CGL to this Court.
- On 03.05.2021, the preliminary fact-finding inquiry report had been submitted (P13a) where the inquiring officers had found that the 3rd Respondent had committed several fraudulent activities.
- On 17.06.2021, the 3rd Respondent had been issued with a charge sheet (P14)
- On 23.06.2021, the 3rd Respondent had replied denying the charges but, has stated that he has resigned from the Petitioner company (P15).
- On 30.09.2021, the disciplinary inquiry had commenced
- On 08.10.2021, the disciplinary inquiry report had been compiled with and the 3rd Respondent had been found guilty of all three charges.
- On 29.11.2021, the CGL had informed the calculated amount to be paid as gratuity pertaining to the inquiry in to non-payment of gratuity.

At this stage, let me now consider the Petitioner's main contention whether the Labour Commissioner had jurisdiction to entertain the 3rd Respondent's application.

The 3rd Respondent's complaint

The 3rd Respondent had complained to the 2nd Respondent pertaining to the non-payment of gratuity on 11.03.2021. In the said complaint, he asserted that, having completed 26 years of service and ceased to be an employee, he had not been paid his gratuity for a period of seven months. Further, in his complaint he has stated that from 31.07.2020 he has ceased to be an employee of the Petitioner (R1). Upon receipt of the said complaint, by letter dated 30.03.2021, the 2nd Respondent had issued a notice on the Petitioner to be present to inquire into the complaint and the inquiry had been fixed on 07.04.2021. The Payment of Gratuity Act contemplates that an employer who has more than 15 employees, are made liable to pay gratuity. Parties are not at variance that the Petitioner company falls within this category and are liable to pay gratuity within the meaning of the Act. The period of service the 3rd Respondent has rendered was not disputed and thus, the 3rd Respondent falls within the period of service stipulated in the Act. This is specially elaborated in section 5(1) of the Act. The said section contemplates of payment of gratuity within 30 days of termination of employment. The said section also specifically states that the termination can be by the employer or workman or on retirement etc. In this instance, the 3rd Respondent's contention was that

since he had tendered his resignation, the workman had terminated the services after giving one month notice to the employer.

It is not disputed and as reflected in R1, the Petitioner has failed to pay the gratuity to the 3rd Respondent as contemplated by the Act within the time period provided for in the Act. However, the Petitioner contends that they had refused to accept the resignation of the 3rd Respondent on the basis that there is a disciplinary inquiry and also it is pleaded on 27.04.2021, the Petitioner had brought to the attention of the 2nd Respondent that the gratuity due to the Petitioner is forfeited and has also submitted further that they will assert their rights pursuant to section 13 of the Payment of Gratuity Act. It is pertinent to note that to substantiate this contention of informing the CGL about the employer invoking section 13 of the Payment of Gratuity Act (which will be hereinafter called the Act) there is no material before Court as neither party has tendered a copy of the proceedings before the Labour Commissioner to this Court. As per the above, it is clear that the Petitioner has failed to pay the gratuity within the stipulated time period in the Act. In this regard, both the Counsel contended that sections 13 and 17 of the Payment of Gratuity Act were relevant. While section 13 stands as an exception to the liability to pay gratuity imposed pursuant to section 5 of the Act, section 17 deals with the jurisdiction to inquire in to such invocation of section 13, or the forum an aggrieved party should complain.

Section 13 of the Payment of Gratuity Act provides;

13. Any workman to whom a gratuity is payable under Part II of this Act and whose services have been terminated for reasons of fraud, misappropriation of funds of the employer, wilful damage to property of the employer, or causing the loss of goods, articles or property of the employer, shall forfeit such gratuity to the extent of the damage or loss caused by him.

Section 17 of the Payment of Gratuity Act provides;

“17.

(1) Section 31B of the Industrial Disputes Act is hereby amended

(a) in subsection (1) of that section, as follows:

(i) by the substitution, for paragraph (b) of that subsection, of the following paragraph:

“(b)the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits,

where such workman has been employed in any industry employing less than fifteen workmen on any date during the period of twelve months preceding the termination of the services of the workman who makes the application or in respect of whom the application is made to the tribunal;”

(ii) by the relettering of paragraph (c) of that subsection as paragraph (d) thereof,

(iii) by the insertion immediately after paragraph (b) of that subsection of the following new paragraph:

“(c)the question whether the forfeiture of a gratuity in terms of the Payment of Gratuity Act, 1983 has been correctly made in terms of that Act;”; and

(b) in subsection (6) of that section, by the substitution, for paragraph (c) of that subsection, of the following paragraph:

“(c)a labour tribunal may on any such application order such person to pay to that workman any sum as wages in respect of any period during which that workman was employed by such person, or as compensation as an alternative to the reinstatement of that work man, and such order may be enforced against such person in like manner as if he were such employer: Provided, however, that in the case of such person who had employed less than fifteen workmen, in any industry, a labour tribunal may , in addition to the relief granted in the preceding provisions of this paragraph, order the payment of gratuity to such workman by such person”.

(2) Section 33 of the Industrial Disputes Act is hereby amended in subsection (1) of that section, by the substitution, for paragraph (e) thereof, of the following paragraph :

“(e) as to the payment by any employer of a gratuity (except where a gratuity is payable under the Payment of Gratuity Act, 1983) or pension or bonus to any workman, the amount of such gratuity or pension or bonus and the method of computing such amount, and the time within which such gratuity or pension or bonus shall be paid”.”

Section 31B(1)(c) of the Industrial Disputes Act reads as;

“(1) A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to labour tribunal for relief or redress in respect of any of the following matters:-

....

*(c) the question whether the **forfeiture** of a gratuity in terms of the Payment of Gratuity Act, 1983 has been correctly made in terms of that Act”*

It is the contention of the Petitioner that, any matter pertaining to payment or forfeiture of gratuity due, is vested with the Labour Tribunal pursuant to the powers granted under the Industrial Disputes Act and not with the Labour Commissioner. Hence the contention that the CGL has no jurisdiction to inquire.

As per section 13 of the Act, it is clear that gratuity is payable under Part II of the Act to an employee can be forfeited. However, to invoke the forfeiture, the section contemplates certain conditions which reads as follows;

*Any workman to whom a gratuity is payable under Part II of this Act and whose services have been terminated for reasons of **fraud, misappropriation of funds of the employer, wilful damage to property of the employer, or causing the loss of goods, articles or property of the employer**, shall forfeit such gratuity to the extent of the damage or loss caused by him. (Emphasis added)*

Hence, for gratuity to be paid, there should be a termination of employment and the said termination if it is for the reasons mentioned above then, the employer is entitled to forfeit the gratuity to the extent of the damage or loss caused by the workman.

Was there a termination?

It is the 3rd Respondent's contention that by P10 he had tendered his letter of resignation. As per the letter of resignation his resignation is to take effect on 31.07.2020. However, by P11, the Petitioner had refused to accept the said resignation. This letter is dated 30.07.2020. In this letter, the Petitioner has informed the 3rd Respondent that there is an “upcoming inquiry” with regard to “discrepancies and irregularities taken place in the estates” where the 3rd Respondent had served as a superintendent. Hence, if the resignation is not accepted, can there be termination? In his book, Contract of Employment, S.R. de Silva, in page 329, quotes the case of **Gupta v. State of Madhya Pradesh 1972 (2) LLJ 369 (MAD.PRAD.)** where the Court held;

“the resignation of a permanent employee takes effect only when it is accepted by the employer. It may be withdrawn before acceptance and further, that a resignation merely amounts to an offer to quit the service and unless the offer is

accepted by the employer... it cannot bring about the termination of services of the employee concerned”.

Hence, for a letter of resignation to take effect it must be accepted. In this instance, the said letter has not been accepted. However, strangely, the Petitioner has written to the Employees Trust Fund Board manager on 22.09.2020 informing that the 3rd Respondent had ceased his services with the Petitioner. The said letter reads as follows;

“We confirm that the above named ceased his services from Balangoda Plantations PLC with effect from 31st July 2020 and will not contribute any remittances on his behalf to the ETF Board by the Company.

This letter has been issued at his request to proceed with the withdrawal of his contributions remitted to the ETF.”

It appears that although the Petitioner, by P11, had refused to accept the letter of resignation marked as P10, had subsequently accepted it when the Petitioner wrote to the ETF board by R2. Further, the said letter also clearly states that the 3rd Respondent has ceased his services with the Petitioner with effect from 30.07.2020 and therefore the Petitioner has put the ETF board on notice that they would not contribute any remittance on behalf of the employee to the ETF board. Strangely, the 3rd Respondent’s resignation letter also states that he is resigning on 31.07.2020 and hence, it appears that the Petitioner has acted upon the resignation letter, which means they have accepted the resignation letter. It is trite law that a party cannot approbate and reprobate at the same time. In the said circumstances, the Petitioner was not in a position to explain why they acted on the letter of resignation and ceased to contribute the statutory dues if they had not accepted the resignation as per their own letter P11.

Further, by P12, dated 23.07.2020, the 3rd Respondent had informed the Petitioner to make arrangements to take over the estate the 3rd Respondent was, with the goods, which the Petitioner did not deny. Hence, it appears that the Petitioner has taken over the estate in accordance with the resignation marked as P10 from the date stipulated on the letter of resignation.

Coming back to the relevant section in the Payment of Gratuity Act, even though the Petitioner has not accepted the resignation, by issuing the letter R2 and by their conduct, it appears and is safe to conclude that there is a termination of services between the employer and employee within the meaning of the Payment of Gratuity Act. The Petitioner’s complaint to the Labour Commissioner is dated 11.03.2021 and that is subsequent to the said termination.

The Petitioner contends that an investigation against the 3rd Respondent had commenced on 02.06.2020 (P9b). However, whether this investigation was informed to the 3rd Respondent is unclear soon after the 3rd Respondent had tendered his resignation. It appears that the Petitioner had been informed of a disciplinary inquiry on 03.07.2020 (P11). However, a formal charge sheet had been served by the Petitioner only on 17.06.2021 (P14). Hence, at the time of the 3rd Respondent complaint to the Labour Commissioner which was on 11.03.2021, the Petitioner had not been served with a charge sheet disclosing fraud, misappropriation of funds etc. Further, at the time of the complaint the 3rd Respondent's gratuity could not have been forfeited as contemplated in section 13 since forfeiture can be done only to the extent of the damage or loss cause. In the absence of a formal inquiry and a formal finding, whether there existed grounds contemplated under section 13 of the act if so the extent of damage or loss caused cannot be quantified. Hence, at the time of the 3rd Respondent referring the complaint to the 1st Respondent, in my view, there was no bar for the 1st Respondent to accept the said complaint. In any event, the Petitioner did not contend before this Court that due to the non-acceptance of the resignation that there was no termination.

Let me now consider whether the Commissioner General of Labour had jurisdiction to hear and determine the dispute.

The Petitioner submits that the 3rd Respondent's services had been terminated by the Petitioner by letter of termination of employment dated 13.10.2021 marked as P3. It was their contention by the said letter the 3rd Respondent had been informed that the Petitioner has invoked section 13 of the Act No.12 of 1983 and forfeited the gratuity.

However, by the time this letter was issued the Commissioner of Labour had already informed the Petitioner of the findings of his inquiry into non-payment of gratuity and had calculated the amount of gratuity to be paid. Hence, it is clear that at the time the Commissioner had calculated and informed the amount of gratuity to be paid there had been no formal invocation of section 13. As I have stated above, in any event, there cannot be a formal invocation of section 13 because even by the time the inquiry was concluded, the Petitioner had not been able to quantify the amount due that was to be forfeited. This Court comes to this conclusion since no material to that effect has been tendered to this Court. It is also observed that even in the letter of termination, the exact amount of the damage or loss caused by the 3rd Respondent which the Petitioner seeks to recover is not reflected.

Inquiry before the Commissioner of Labour

Both parties are not at variance that an inquiry before the Commissioner of Labour had taken place (paragraph 20 of the Petition). However, as I have stated, none of the parties have tendered the inquiry proceedings. In the absence of the same this Court is not in a position to ascertain whether the Petitioner had informed the Commissioner of Labour about the inquiry against the 3rd Respondent and at least about the charges that are to be framed against the 3rd Respondent. Further in the absence of the proceedings before the CGL, there is no material to establish that the Petitioner has taken the jurisdictional objection which the petitioner has taken before this Court. In the absence of such, can the 1st Respondent accept an argument pertaining to the non-payment of gratuity under section 13 of the Act? It is further observed by this Court in the absence of the proceedings this Court is not in a position to ascertain whether the Petitioner had raised the objection of jurisdiction under section 31B(1)(c) of the Industrial Disputes Act read with section 13 of the Payment of Gratuity Act.

This Court has considered the case of ***M.A. Lanka (Pte.) Ltd. v. Commissioner General of Labour and others*** CA Writ 387/2013, CA Minutes 21.11.2017, and agrees with the findings of the said case.

As per the documents tendered by the Petitioner, the charge sheet against the Petitioner reflected in P14 had been issued on 17.06.2021. In the said charge sheet, it appears that there are charges to state that by the conduct of the 3rd Respondent, financial loss to the company had been caused. However, the inquiry into the said charge sheet had commenced only on 30.09.2021. The order of the disciplinary inquiry reflected in P25 is dated 08.10.2021, but the inquiry before the Commissioner had commenced on 07.04.2021 which is even prior to a charge sheet being issued.

However, it is pertinent to note that subsequent to the inquiry, the final impugned order of the Labour Commissioner is dated 29.11.2021 (P27). This is subsequent to the conclusion of the disciplinary inquiry and its findings. It is observed by this Court that by the time P27 was delivered, there were grounds for the Petitioner to forfeit the gratuity provided that the Petitioner had informed the same to the Commissioner of Labour. There is no material before this Court to establish that the Petitioner had communicated the outcome of the disciplinary inquiry and their decision to forfeit gratuity payment before P27 was issued. Hence, in my view, as per the documents tendered, when the 3rd Respondent complained of non-payment of gratuity and even when the inquiry against the said complaint commenced, it appears sufficient grounds to forfeit gratuity did not exist pursuant to section 13 of the Payment of Gratuity Act.

There is no material tendered to establish that the Petitioner had brought to the attention of the Commissioner General of Labour the existence of grounds and the invocation of section 13 of the Act.

Hence, even applying the *M.A. Lanka* case, the holding of the inquiry of the Labour Commissioner cannot be faulted. As per section 17 of the Payment of Gratuity Act, the jurisdiction to inquire into the forfeiture of gratuity will shift to the Labour Tribunal only if the conditions stipulated under section 13 are fulfilled as the Petitioner has more than 15 workmen. However, if it was less than 15 workmen then under section 17 of the Act, the jurisdiction would shift to the Labour Tribunal. Further, even after the commencement of the inquiry, if the Petitioner had brought to the attention of the Commissioner the charges against the 3rd Respondent and the findings, and the invocation of section 13 with the objection to jurisdiction, then in my view, the Commissioner could have referred the matter to the Labour Tribunal. The said proposition would not arise in this case as there is no material tendered by the Petitioner that they have brought to the Commissioner the serious finding against the 3rd Respondent. Further, the material couldn't have been tendered to the Commissioner, as by the time the inquiry commenced, neither the charge sheet nor the findings were in existence.

The impugned document P27 is the final outcome of the inquiry. However, to reach the figures in the impugned document, the inquiring officer should have had sufficient reasons. The learned State Counsel submitted that the said reasons are contained in the inquiry proceedings and not in the certificate that is impugned. This Court has not been provided with the reasons for arriving at the decision in the certificate. The Petitioner's next ground seeking to quash the impugned decision is that the said decision does not contain reasons. In my view, as enumerated in the *M.A. Lanka* case, a decision devoid of reasons is bad in law and is vulnerable to be quashed. However, in this case did the Petitioner make any attempt to obtain the reasons for the impugned decision? Has the Petitioner made any attempt to obtain the copy of the proceedings?

As I have stated above, there is no material to demonstrate that the Petitioner has sought a copy of the proceedings, or the reasons for the order. The Petitioner in the instant application has not prayed for the Court to call for the record. In the absence of such, can this Court come to the conclusion that there are no reasons given for the impugned decision without examining the proceedings?

If the Petitioner has made an application to obtain the proceedings and the reasons and if it has been refused and if it had not been produced by the Respondents, then in the

absence of reasons, this Court would not hesitate to quash the impugned decision. However, as stated above there is no material to demonstrate that the Petitioner had made any attempt to obtain the copy of the proceedings or the reasons for the decision. It is trite law that in a Writ application the burden of proof is with the Petitioner. Hence, the Petitioner should have tendered the proceedings before the Commissioner to this Court. The Petitioner has not only failed to tender the said proceedings, but has also failed to tender any material to demonstrate that he has attempted to obtain a copy of the proceedings.

In the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** SC Appeal 10/2009 decided on 15.12.2014, at page 5, it was provided that, *“The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies”*.

In ***Handapangoda Mudalige Mahendra Gunasekara, and another v. Ms. W.A.S. Chandrasekara, Commissioner General of Inland Revenue and 5 others*** CA/WRIT/313/24 decided on 29/08/2024, it was stated;

*“Further, it is observed that though the Petitioners contend that they were not the directors as per the evidence submitted through their own pleadings, it is clear that this business entity had been in operation since 2006. It is also clear that the entity had been submitting its returns to the IRD which means it had been operating. Then there should have been a workforce under the entity and their salaries and statutory dues would have been paid. The profits of the entity would have been collected and some person would have been responsible for the losses if any. None of these facts were addressed by the Petitioners though **the burden of proof in a writ application lies with the Petitioners**”* (emphasis added).

In this case the Petitioner has failed to discharge the said burden. For the above reasoning I do not think I can agree with the contention of violation of natural justice due to the failure to give reasons,

It is also pertinent to note that no material was presented to this Court to demonstrate that the Petitioner had acted or taken disciplinary action against the 3rd Respondent for not reporting to work if the Petitioner had not accepted the resignation letter as from 31.07.2020, the 3rd Respondent had not reported to work. In the absence of proceedings this Court is unable to ascertain whether evidence had been presented by the Petitioner to Commissioner of Labour to trigger section 13 of the Payment of Gratuity Act.

The Court in the ***M.A. Lanka*** case held as follows;

“In fact, what is necessary for purposes of the Commissioner of Labour to ascertain whether he has jurisdiction or not is some kind of evidence whether the services of the workman have been terminated in terms of Section 13 for reasons of fraud, misappropriation of funds of the employer, willful damage to property of the employer, or causing the loss of goods, article of property of the employer.

...

If that evidence is manifest or evident to the Commissioner of Labour upon a facial examination of available documents, it is at this stage that the Commissioner of Labour would lose seisin of the matter.

...

Merely because an employer states before the Commissioner that he has effected a Section 13 forfeiture ... it doesn't automatically follow that the Commissioner should stay his hand. It is open to the Commissioner to ascertain the genuineness of the claim of the employer that he has in fact effected a forfeiture for the reasons set out in Section 13 of the Payment of Gratuity Act.”

The Petitioner also relied on the ***Lanka Milk Food CW Plc v. DKJ Prabhath Chandrakeerthi, Commissioner General of Labour and others*** CA Writ 432/2022 decided on 18.12.2024 and also ***Lanka Milk Food CW Plc v. DKJ Prabhath Chandrakeerthi, Commissioner General of Labour*** CA Writ 312/2023 decided on 18.12.2024. However, for the above stated reasons this Court finds that the facts and findings of the above two cases are different to the present case. This takes me to the objections raised by the Respondents.

Suppression of material facts

It was the contention of the Petitioner that they had refused to accept the resignation of the 3rd Respondent. Therefore, the employer-employee relationship continued until the conclusion of the disciplinary inquiry which resulted in the termination of the 3rd Respondent by letter dated 13.10.2021 (P3). However, the Petitioner did not plead nor bring to this Court's attention that the issuance of letter R2 where the Petitioner itself has informed the ETF Board that the 3rd Respondent had ceased his services from 31.07.2020 and has further said they will not contribute any remittance thereafter, clearly contradicts with the Petitioner's own position that the 3rd Respondent was an

employee until termination. The learned State Counsel submitted that this is a grave suppression of material facts. By perusing the Petition, this Court observes the Petitioner has failed to disclose the existence of the letter in the averments pleaded. Hence, the objection that there is a suppression of material facts has to succeed. It is trite law that suppression of material facts disentitles the Petitioner from seeking relief in equity.

In ***Namunukula Plantations Limited v. Minister of Lands and others* (2012) 1 SLR 376** it was inter alia held;

“It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberimafides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”

In ***Collettes Ltd v. Commissioner of Labour and others* (1989) 2 SLR** it was held

“it is essential, that when a party invokes the writ jurisdiction or applies for an injunction, all facts must be clearly, fairly and fully pleaded before the court so that the court would be made aware of all the relevant matters.”

The Respondents also took up the objection that the Petitioner is guilty of laches.

Laches

It appears that the Petitioner is challenging before this Court the decision of the Commissioner of Labour marked P27 and dated 29.11.2021. However, the Petitioner has filed this Petition only on 03.08.2022 which is nine months after the impugned decision has been made. Further, this Court observes that by the impugned decision, the Petitioner had been informed to deposit the gratuity within 14 days of receipt of P27. Hence, the objections that the Petitioner has sought relief in equity after an undue delay and that the Petitioner is guilty of laches have to succeed.

Conclusion

I have considered the material submitted to this Court, and the submissions made. However, in my view, the Petitioner has failed to establish the ground relied upon by him to obtain the reliefs sought. The Petitioner has failed to demonstrate any ground that warrants the intervention of this Court. Hence, for the above stated reasons, I refuse to grant the reliefs sought and proceed to dismiss this Writ application.

However, in parting with this judgment I wish to state that this judgment should not be a bar for the Petitioner to take appropriate legal steps in an appropriate forum to recover any damages caused, if any, by the 3rd Respondent if the Petitioner desires so. I make no order on costs in this application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal