

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

In the matter of an Application under and in  
terms of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

General Engineering & Business  
Services (Pvt) Ltd.  
171, Nawala Road,  
Narahenpita,  
Colombo 05.

**Petitioner**

CA (Writ) Application No: 03/2014

Vs.

1. V.B.P.K. Weerasinghe,  
Commissioner General of Labour,  
Department of Labour,  
Colombo 05.
2. A.P. Jothiratne,  
195/5, Sirisumana Mawatha,  
Kelanimulla,  
Angoda.
3. The Honourable Attorney General ,  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

**Respondents**

**Before** : A.L. Shiran Gooneratne J.

**Counsel** : Bhagya Herath for the Petitioner.

Suranga Wimalasena, SSC for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

Zhurhani Machado for the 2<sup>nd</sup> Respondent.

**Argued on** : 28/11/2017

**Written Submissions of the 2<sup>nd</sup> Respondent filed on:** 27/03/2018

**Written Submissions of the 1<sup>st</sup> & 3<sup>rd</sup> Respondents filed on:** 06/04/2018

**Judgment on** : 29/06/2018

**A.L. Shiran Gooneratne J.**

The Petitioner has invoked the jurisdiction of this Court seeking, a mandate in the nature of writ of Certiorari to quash a part of an order given by the 1<sup>st</sup> Respondent (Commissioner General of Labour) Ref. TEUA/A/11/2008, marked P7, dated 06/12/2013, which contains the payment of back wages to the Petitioner from 08/02/2008 to 02/04/2009. This order was made by the 1<sup>st</sup> Respondent subsequent to a Judgment given by this Court in CA. (writ) 539/2010, marked P3, directing the 1<sup>st</sup> Respondent to make an appropriate order for re-instatement of the 2<sup>nd</sup> Respondent, (workman) “with wages and other benefits which the workman would have received if his services had not been terminated”. The 1<sup>st</sup> Respondent made the impugned order after an inquiry, as directed by Court.

The Petitioner Company has partly complied with the impugned order of the 1<sup>st</sup> Respondent by re-instating the 2<sup>nd</sup> Respondent, however has failed to comply with the direction to pay back wages to the 2<sup>nd</sup> Respondent from 08/02/2002 to 02/04/2009 as reflected in the order given by the 1<sup>st</sup> Respondent marked P3, which the Petitioner has sought to be quashed. The Petitioner is relying on documents marked P1, and P2, in support, on the basis that the Petitioner has not terminated the employment of the 2<sup>nd</sup> Respondent, as contended.

It is observed that the Petitioner has not relied on any legal basis to invoke the writ jurisdiction of this Court to challenge the said determination. The said failure on the part of the Petitioner is sufficient to reject the instant application. However, I will proceed to evaluate the merits of this case.

The Petitioner's case in brief, is that the 2<sup>nd</sup> Respondent kept away from work and at no time did the Petitioner terminate his services. In support of the above contention, the Petitioner relies on documents marked P1 and P2, and submits that the 2<sup>nd</sup> Respondent is not entitled for back wages since he has received the salary for the months of March and April 2008, as reflected in the document marked P1. The Petitioner submits that the 2<sup>nd</sup> Respondent has drawn his salary for March and April 2008, and that he has also drawn a loan of Rs, 8000/- on the salary, as contained in the receipt signed by the said Respondent marked P2. It is common ground that the 2<sup>nd</sup> Respondent was re-instated by the

Petitioner, as required by the first part of the impugned order, which remains unchallenged.

The documents marked P1 and P2, are challenged by the Respondents on the basis that the 2<sup>nd</sup> Respondent was coerced and/ or induced to sign the said document on the pretext that his arrears of salary is paid to him in terms of the impugned order and thereby deceiving the 2<sup>nd</sup> Respondent to sign the said document marked P1. By documents marked 2R7 and 2R8, the 2<sup>nd</sup> Respondent has denied any involvement in writing the said document, marked P1.

Documents marked P1 and P2, was not in issue, until the Petitioner discovered the two documents at the time of filing this Petition. The Court observes that the document marked P2, dated 10/04/2008, attached to the Petition is not a duly certified document and therefore, is not in compliance with rule 3 (1) (a), of the Court of Appeal (Appellate Procedure) Rules 1990. The Court also observe hand-written words, "GEBS (Pvt) Ltd" before the word Petty Cash Voucher, printed on document marked P2, which creates a doubt on the authenticity of the said document.

As pointed out by the Respondents, document marked P1, has come into existence after the Judgment given by this Court and the impugned decision by the 1<sup>st</sup> Respondent dated 06/12/2013. In documents marked 2R7 and 2R8, the 2<sup>nd</sup> Respondent deny making the said document marked P1, and has explained giving reasons as to why he placed his signature to a document, which he deny writing.

The said documents were not produced to this Court at the previous determination or, at the inquiry held thereafter. Therefore, the credibility of documents marked P1 and P2 are in doubt, and therefore, is not safe to admit the said documents in evidence.

Document marked P1, self-serves the Petitioner, to the extent that if admitted, would negate the application by the 2<sup>nd</sup> Respondent made to the 1<sup>st</sup> Respondent dated 07/04/2008, that his services were unlawfully terminated by the Petitioner on 08/02/2008. Therefore, the instant application could be seen as a covertly action by the Petitioner to challenge the impugned determination in it's entirety and thereby put in to question the validity of the re-instatement of the 2<sup>nd</sup> Respondent by the Petitioner.

In the case of *Shell Gas Lanka Ltd. Vs. Ceylon Commercial and Industrial Workers Union and others 2000 (3) SLR 170*, submitted by the 2<sup>nd</sup> Respondent, the Court held, that;

*"----- if a litigant as the Petitioner in this case intended to contradict the record, he should have filed the necessary papers before the court or tribunal as the case may be and initiated an inquiry before such authority in the first instance. It is thereafter, that he should raise the matter in the appropriate proceedings before the Court of Appeal so that such court would be in a possession on the material before it to make a proper*

*determination with the benefit of the order of the deciding authority in the first instance-----”*

The challenge to the impugned determination marked P7, is based on documents marked P1 and P2. For reasons stated above, the said documents relied upon by the Petitioner are not tested by any authority, in the first instance and therefore are not safe to be admitted as evidence.

In all the above circumstances, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL