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

In the matter of an Appeal under Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Article 138 in exercising appellate jurisdiction

C.A. Case No: **CA/PHC/25/2015**

HC/ Chilaw/Revision Case No: **03/2015**

MC Chilaw Case No: **59666**

Bhuwalka Steel Industries (Sri Lanka) Ltd.,
No. 65/2,
Sri Chittampalam A. Gardiner Mawatha,
Colombo 02.

Presently at
No. 5/5-10, East Tower,
5th Floor, WTC,
Echelon Square,
Colombo 01.

Respondent-Petitioner-Appellant

-Vs-

D.M. Karunaratne,
Acting Deputy Commissioner of Labour,
Legal Section, Department of Labour,
Colombo 05.

Complainant-Respondent-Respondent

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

&

Mahinda Samayawardhena J.

Counsel : Dr. Sunil Coorey with Jude Dinesh for the Respondent-Petitioner-Appellant

M. Srimeththa, SC for the Coplainant-Respondent-Respondent

Written Submissions: By the Respondent-Petitioner-Appellant on 02/01/2019

By the Complainant-Respondent-Respondent on 27/09/2018

Argued on : 16/05/2019

Judgment on : **28/06/2019**

A.L. Shiran Gooneratne J.

This is an Appeal by the Respondent-Petitioner-Appellant (Appellant) against the order of the learned High Court Judge of the North Western Province holden in Chilaw to have order dated 11/03/2015 set aside.

The Complainant-Respondent-Respondent (Respondent) initiated proceedings in the Magistrate's Court of Chilaw against the Appellant on a certificate filed under Section 3D(2) read with Section 53 and 63 of the Wages Boards Ordinance No. 27 of 1941 as amended (ordinance), seeking to recover a sum of Rs. 300,000/51, as unpaid salaries of two workmen for the period from 01/06/2009 to 31/08/2011. The learned Magistrate, after inquiry, by order dated 18/12/2004, directed the recovery of the said sum from the Appellant as a fine. The Appellant moved in revision to the High Court of Chilaw, however, was refused notice by the learned High Court Judge.

In this application, the Appellant argues that the certificate filed by the Respondent is not a valid certificate within the meaning of Section 3D(2) of the Ordinance, in that "particulars of the sum" claimed, sought to be recovered by the said certificate is not stated. The Appellant contends that the particulars contained in the said certificate does not give the names of the workmen or the period which there had been a short payment by the employer. It is further contended that the certificate does not identify the type of work done by the workmen and that providing such particulars is an imperative requirement of the law. Therefore, the learned counsel for the Appellant submits that the law clearly imposes a duty on the Respondent to give such particulars of the composition of the total sum arrived at and therefore, the certificate filed is not a certificate within the meaning of

Section 3D(2) of the Ordinance. The Appellant took up the said question of law before the learned Magistrate.

However, the Respondent contends that, it is not necessary to include all particulars in the certificate of employment since Section 46(3) of the Ordinance gives adequate notice of contributions and defaults and all computation of particulars of the amount sought to be recovered.

Section 3D of the Ordinance regulates the recovery of arrears of wages in persons employed in certain trades. Section 3D(1) enables the Commissioner of Labour to calculate the wages or short payment of wages upon consideration of both oral and documentary evidence available. The said sum calculated can be recovered as a fine by way of a certificate filed before the Magistrate's Court having jurisdiction in terms of Section 3D(2) of the Ordinance. Section 3D(3) provides limitations upon the questionability as to the correctness of any such statement in the Certificate issued by the Commissioner of Labour and would not be called in question or examined at any proceedings before the Court.

Section 3D (3) states,

> *"The correctness of any statement in a certificate issued by the Commissioner for the purposes of this Section shall not be called in question or examined by the Court in any proceedings under this Section, and accordingly, nothing in this Section shall authorize the Court to consider or decide the correctness of any statement in such*

certificate, and the Commissioner's certificate shall be sufficient evidence that the amount due under Sub-section (1) from the defaulting employer has been duly calculated and that such amount is in default."

The wording in Section 3D(3) of the Ordinance is identical to the wording in Section 38(3) of the Employees Provident Fund Act No. 15 of 1958 as amended, (EPF Act) is not in dispute. *"----the Ordinance and the EPF Act are Acts in "pari material" as they deal with labour relations with a view to safeguard the interest of the worker"* (CA (PHC) 195/2013, CA (PHC)/APN/105/2015). The respective parties are not at variance regarding the said position.

Beal's Cardinal Rules of Interpretation at p. 402 provides that Statutes in "pari material" should be interpreted alike;

"where there are different statutes in pari materia, though made at different times or even expired or repealed, and not referring to each other, and though using different language, they shall be taken and interpreted together as one system and as explanatory of each other." – Rex v. Loxdale (1758), 1 Burr. 445, at p. 447, Lord Mansfield, C.J. [cited by Farwell, L.J., in Goldsmiths' Company v. Wyatt, [1907] 1 K. B. 95, at p. 105; 76 L.J.K.B. 166, at p. 169]

It further provides that *"Whatever has been determined in the interpretation of one of several statutes in pari materia is a sound rule of interpretation of the other."* – Rex v. Mason (1788), 2 T.R. 581, at p.586, Buller J.

The above position is cited with approval in the case of Yakoob Bai v. Samimuttu 51 NLR 345 at page 346.

In **Mohamed Ameer and Another v. Assistant Commissioner of Labour (1998) 1 SLR 156**, in a matter coming within Section 38(2) of the EPF Act, the Court identified two distinct questions arising in relation to enforcement proceedings commenced in terms of a certificate issued under Section 38(2) of the EPF Act.

"The first is whether the certificate sets out the particulars of the sum due, in the manner and to the extent required by Section 38(2). If it does not, the certificate does not satisfy Section 38(2), and no further proceedings can be had. (as to the sufficiency of particulars)."

"The second question only arises where the necessary particulars have been given which will be in the form of statements in the certificate, as to persons, periods, amounts, etc."

The issue in the instant case is the question of validity of the said certificate due to want of particulars.

Upon perusal of the certificate filed in terms of Section 3D(2) of the Ordinance, I do not see any particulars given to adequately identify the employees in respect of whom default is alleged and the contributions alleged to have been defaulted. The submission of the counsel for the Respondent is that, since all

particulars were given to the employer in terms of Section 46(3) of the Ordinance, the requirement of notice is fulfilled and therefore, no further notice is required. This argument is untenable. The certificate should contain particulars to the extent required by Section 3D(2), of the Ordinance.

In **City Carriers Ltd. V. The Attorney General (1992) 2 SLR 257**, the Court came to a clear finding that *"Where the certificate contains no particulars of the sum claimed, there is in law no certificate".*

In **Mohamed Ameer and Another v. Assistant Commissioner of Labour (supra)**, Fernando J. observed that;

> *"The issue of a certificate does not compel the Magistrates Court to proceed, automatically, to recover the sum stated: the Court must give the alleged defaulter an opportunity to show cause why further proceedings for the recovery of the sum claimed should not be taken. The law thus expressly incorporates the audi alteram partem rule. Fairness requires that, when a certificate a sum allegedly due, it must also give adequate details of how it was made up to enable the alleged defaulter to show cause. ---- but to say that the number of employees involved was two is in my opinion quite insufficient".*

The certificate filed in terms of Section 3D(2) in the appeal brief at page 463, does not give particulars as required, constitutes sufficient reason to prevent

the execution of the certificate. Therefore, the said certificate cannot be considered as a certificate valid in law.

For the foregoing reasons, I set aside the judgment of the learned High Court Judge of Chilaw dated 11/03/2015, and the order of the learned Magistrate dated 18/12/2014, and allow the appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL