

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

In the matter of an Application for mandates  
in the nature of Writs of *Certiorari* and  
*Prohibition* under and in terms of Article 140  
of the Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0599/2021**

**CA/WRT/0600/2021**

**CA/WRT/0601/2021**

**Namunukula Plantations PLC,**  
No.310, High-Level Road, Navinna,  
Maharagama.

**Petitioner**

**Vs.**

1. **Commissioner General of Labour,**  
No.41, Kirula Road,  
Colombo 05.
2. **The Ceylon Estate Staffs' Union,**  
No.06, Aloe Avenue,  
Colombo 03.
3.
  - i. **Miss. A.M. Nilmini Dhanapala**
  - ii. **Mrs. D. M. Dayani Pushpalatha**
  - iii. **Mrs. M. Ambumalar**
  - iv. **Mrs. V. Parameshwary**
  - v. **Mr.H.M.R.Ratnayake**
  - vi. **Mr.R.Kumar**
  - vii. **Mr.Punniyaraj .**
  - viii. **Mr. K. Jenisan**
  - ix. **Mr. D. Nithyanandan**
  - x. **Mr. K. Kugan**
  - xi. **Mr. S. Nithyanandaraj**
  - xii. **Mr. S. K. Upul**
  - xiii. **Mr. S. Vijayakumar**
  - xiv. **Mr. S. Sridharan**

- xv. **Mr. R. M. C. Janaka Kumara,**
- xvi. **Mr. S. Solaman**
- xvii. **Mr. L. E. Wimalasena**
- xviii. **Mr. E. Krishnamoorthy**

**All of Cannavarella Estate, Namunukula**

4.

- i. **Miss. V. Prashanthini**
- ii. **Mrs. S. Sivaletchumy**
- iii. **Mrs. W. B. Gerlin Perera**
- iv. **Mrs. V. H. Ariyawathie**
- v. **Mr. H. M. Gayan Chathuranga Herath**
- vi. **Mr. W. M. Dhanasena**
- vii. **Mr. M. D. S. S. Ariyasena**
- viii. **Mr. S. Anbarasan**
- ix. **Mr. D. M. Dayaratne**
- x. **Mr. D. P. U. Jayarathna**
- xi. **Mr. L. G. Sarath**
- xii. **Mr. S. Muthukumar**

**All of Kandahena Estate,  
Namunukula.**

5.

- i. **Mrs. D. M. M. K. Mirahawatte**
- ii. **Mr. S. Ravichandran**
- iii. **Mrs. P. Uma**
- iv. **Mr. I. Sivaperumal**
- v. **Mr. S. J. Ravindrakumar**
- vi. **Mr. E. D. Leelasena**
- vii. **Mr. S. M. Mahindapala**

**All of Kinellan Estate, Ella.**

6.

- i. **Mrs. R. M. Lakmini Rathnayaka**
- ii. **Mrs. V. Devika**
- iii. **Mr. H. M. S. A. Bandara**
- iv. **Mr. Anura Indika Dissanayake**
- v. **Mr. K. G. D. R. Edirisinghe**

- vi. **Mr. M. A. L. Abesyekara**
- vii. **Mr. R. D. Nandasena**
- viii. **Mr. V. Udayakumar**
- ix. **Mr. A. Wijayaraj**
- x. **Mr. E. D. Sanath Lankawansa**
- xi. **Mr. U. Iraniyan**
- xii. **Mrs. Y. M. S. M. B. Yapa**
- xiii. **Mrs. T Sarojani**
- xiv. **Mrs. Lalitha De Silva**
- xv. **Mr. D. M. Chandana Dissanayaka**
- xvi. **Mr. R. Sivananthan**
- xvii. **Mr. E. D. E. A. Sampath Kumara**
- xviii. **Mr. U.Premadasa**
- xix. **Mr. H. A. Darmakeerthi**
- xx. **Mr. S. Thomas Fernando**
- xxi. **Mr. A. Selvakumar**

**All of Hindagala Estate, Balleketuwa**

7.

- i. **Mrs. G. D. Gallappathie**
- ii. **Miss. R. M. S. Pradeepika**
- iii. **Mrs. C. Gayani**
- iv. **Mr. P. Yogeswaran**
- v. **K. Vinodadevi**
- vi. **Mr. V. SandIramohan**
- vii. **Mr. P. Krishnakumar**
- viii. **Mr. M P Sunil Shantha**
- ix. **Mr. R. Krishnakumar**
- x. **Mr. K. Kumarasamy**
- xi. **Mr. P. Rajah**
- xii. **Mr. J. Michel Anjalo**
- xiii. **Mr. S. Pathmanathan**

**All of Gonakelle Estate, Passara**

8.

- i. **Mrs. S.D. L.D.Samaranayake**
- ii. **Mr. A. C. Kamburawala**
- iii. **Miss. S. H. Iresha Dilhani**
- iv. **Mr. K. P. Stanly**
- v. **D. B. Anil Pathmasiri**
- vi. **Mr. A. Sundar**

- vii. **Mr. A. P. Liyanage**
- viii. **Mr. L. D. G. P. Sampath**
- ix. **Mr. Nuwan Asanka**
- x. **Mr. K. Surendran**
- xi. **Mr. D. L. Vimukthi Prasad**
- xii. **Mr. Pradeep Tharanga**
- xiii. **Mr. A. Rameshparam**
- xiv. **Mr. Ajith Weerasekara**
- xv. **Mr. K. D. Sajith Wijegunaratne**
- xvi. **Mr. M. D. C. Kusaladharma**

**All of Eladuwa Estate, Matugama.**

9.

- i. **Mrs. Nadeesha Yusanji**
- ii. **Miss. Hasini Wathsala**
- iii. **Mr. H T Susantha**
- iv. **Mr. D. H. C. Niroshana**
- v. **Mr. D. Devakumara**
- vi. **Mr. Rajitha Sandaruwan**
- vii. **Mr. K. L. Sujeeva Priyadarshana**
- viii. **Mr. L. N. G. Prasad Indika**
- ix. **Mr. P. V. Kushan Chamara**
- x. **Mr. Sachira Mayantha**
- xi. **Mr. N. H. Ajith Kumara**
- xii. **Mr. S. N. Sendanayake**
- xiii. **Mr. U A Dharmasena**
- xiv. **Mr. Jeganadan**

**All of Miriswatte Estate Matugama  
Welipena, Matugama.**

10.

- i. **Mrs. W. M. Subarath Manike**
- ii. **Mrs. G. A. Chamari Nayomi**
- iii. **Mr. S. A. D. P. Samarasinghe**
- iv. **Mrs. R. D. D. Niroshani**
- v. **Miss. D. C. Swarnalatha**
- vi. **Mr. W. M. R. Sandaruwan**
- vii. **Mr. J. K. T. Hewawitharanage**
- viii. **Mr. H Mallikarachch**
- ix. **Mr. S. C. Munasinghe**

- x. **Mr. A. A. H. T. Amarakoon**
- xi. **Mr. S. D. R. Madushanka**
- xii. **Mr. K. M. Lakmal**
- xiii. **Mr. P. H. Denuwan**
- xiv. **Mr. H. P. K. Gamage**
- xv. **Mr. K. G. D. R. A. Gamage**
- xvi. **Mrs. M. Dinusha Priyanganie**
- xvii. **Mrs. Y. Vigneshwarie**
- xviii. **Mr. M. Vijithalal Hemantha kumar**
- xix. **Mr. G. K. Suranjith**
- xx. **Mr. K. Mailwaganam**
- xxi. **Mr. G. K. Sudath**

**All of Pellegoda Estate, Dharga Town.**

11.

- i. **Mrs. Y. S. Renuka**
- ii. **Mrs. H. D. S. Malkanthi**
- iii. **Mr. A. N. Krishan Pradeep Kumara**
- iv. **Mr. Roice Indika**
- v. **Mr. R. I. P. Sanjeewa**
- vi. **Mr. T. A. Chaminda Prasad**
- vii. **Mr. K. D. C. Pushpakumara**
- viii. **Mrs. C. Jagodaarachchi**
- ix. **Mr. W. U. Sudarshana Alwis**

**All of Sirikandura Estate, Matugama.**

12.

- i. **Mrs. K. A. A. Siriwardane**
- ii. **Mrs. D. V. S. Vinodanie**
- iii. **Mrs. M. M. T. Priyadarshanie**
- iv. **Mrs. N. T. D. Samaraweera**
- v. **Mrs. M. Kalyani**
- vi. **Mr. K. D. M. V. Kumara**
- vii. **Mr. S. Ranjan**
- viii. **Mr. A. U. Nandasiri**
- ix. **Mr. M. T. Priyadarshana**
- x. **Mr. C. K. Sembap peruma**
- xi. **Mr. L. Sameera Maduwantha**
- xii. **Mr. I. Cyril**
- xiii. **Mr. Lal Wimalasiri**
- xiv. **Mr. G. K. N. Seneviratne**

**All of Yatadola Estate, Matugama**

13.

- i. **A. S. Kumara Lal**
- ii. **I. G. V. Sanjeewa**
- iii. **P. S. Rajika**
- iv. **K. A. Weerathunga**
- v. **R. Susil Kumara**
- vi. **M. D. S. Priyadharshana**
- vii. **H. B. Sisira**
- viii. **U. D. M. R. Gunasinghe**
- ix. **K. V. Sisil Prema Kumara**
- x. **M. E. Aiith Arivasinhe**
- xi. **N. Jayasinghe**
- xii. **B. P. Karunathilaka**
- xiii. **A. G. N. Priyangika**
- xiv. **K. V. D. I. Devika**
- xv. **W. Chandralal**
- xvi. **K. H. Dayarathna**
- xvii. **B. G. Supun Tharaka**
- xviii. **M. D. P. D. C. Pathirana**

**All of Pelawatte Estate, Pellawatte,  
Matugama.**

14.

- i. **Mr. Ravindrajith Jayawardena**
- ii. **Mrs. K. P. A. Jayasekara**
- iii. **Mr. W. G. Ajith Premarathna**
- iv. **Mrs. Risini Nadeesha de Alwis**
- v. **Mr. B. L. Sudath Viraj**
- vi. **Mr. W. A. Dharmasiri**
- vii. **Mr. D. D. De Silva**
- viii. **Mr. L. H. Koralage**
- ix. **Mr. K. L. Bandula**
- x. **Mr. S. H. R. Manabarana**
- xi. **Mr. K. G. S. K. Lakshman**
- xii. **Mr. G. L. Dahara**
- xiii. **Mr. Ruwan Hirimuthugoda**
- xiv. **Mr. H. L. G. Chandana**

- xv. **Mr. P. G. Anil Indrajith**
- xvi. **Mr. S. M. Nadeera Achintha**
- xvii. **Mr. M. Jayanth Chandrasiri**
- xviii. **Mr. L. L. S. Madusanka Lasantha**
- xix. **Mrs. W. A. Renuka**
- xx. **Mr. A. V. Sunil**
- xxi. **Mr. S. G. Ranjith**
- xxii. **Mr. P. K. Neranjan Menaka**
- xxiii. **Mr. Y. P. Kalansooriya.**

**All of Baddegama Estate, Poddala.**

15.

- i. **Mr. W. K. D. Pushpakumara**
- ii. **Mr. B. G. P. Madushanka**
- iii. **Mr. A. A. Nihal**
- iv. **Mr. N. K. Dahanayake**
- v. **Mr. E. M. K. D. Premawardena**
- vi. **Mr. H. V. Nihal Amarasiri**
- vii. **Mr. R. Wijemanna**
- viii. **Mr. K. N. Jayalath**
- ix. **Mr. K. H. T. Dilshantha**
- x. **Mr. W. A. Wishwa**
- xi. **Mr. W. J. H. Buddika**
- xii. **Mrs. D. I. Wickramanayake**
- xiii. **Mr. K. L. Premasiri**

**All of Citrus Estate, Poddala.**

16.

- i. **Mr. D. H. S. Pushpa Kumara**
- ii. **Mrs. Shamale de Silva**
- iii. **Mrs. K. H. Gayani Renuka**
- iv. **Mr. G. K. Dilan P. R.**
- v. **Mr. K. P. Chandrakumara**
- vi. **Mr. Chandrasiri Dissanayake**
- vii. **Mr. Ananda Kahaduwa**
- viii. **Mr. Prasad Dissanayaka**
- ix. **Mr. W. Piyarathna**
- x. **Mr. K. L. R. Sisira Kumara**

- xi. **Mrs. B. R. Samaranayake**
- xii. **Mr. G. L. Jayantha**
- xiii. **Mr. L. D. Upali**
- xiv. **Mr. Stephen Godfree**

**All of Walpita/ Monrovia Estate,  
Poddala.**

17.

- i. **Miss. P. H. Ramani Priyantha**
- ii. **Mrs. N. V. Nayana Samanmalie**
- iii. **Miss. Harshani Walpalage**
- iv. **Mrs. H. M. Mangalika**
- v. **Mr. K. P. G. I. Sampath**
- vi. **Mr. W. G. P. Madushanka**
- vii. **Mr. H. H. Prageeth**
- viii. **Mr. C. K. W. Wakista**
- ix. **Mr. P. Liyanage**
- x. **Mr. P. K. Thusitha Thilanka**
- xi. **Mr. J. K. P. Samindra**
- xii. **Mr. D. Aruna Shantha**

**All of Akuress Estate, Telijavila.**

18.

- i. **Mrs. Y. R. Adihetti**
- ii. **Mr. N. V. Lal Pushpa Kumara**
- iii. **Mrs. Darshi Liyanage**
- iv. **Miss. Leela Ranawaka**
- v. **Miss. K. B. Champika Dilani**
- vi. **Mr. P. A. Udaya Kumara**
- vii. **Mr. K. B. A. Jayasuriya**
- viii. **Mr. A. C. Sahabandu**
- ix. **Mr. G. G. Asanka Ruwan Kumara**
- x. **Mr. G. N. H. S. P. Karunasena**
- xi. **Mr. A. A. Danushka Nishad**
- xii. **Mr. E. D. Gihan Kampika**
- xiii. **Mr. W. P. Rukman Jayamini**
- xiv. **Mr. M. G. N. P. Edirisinghe**
- xv. **Mr. S. G. Sampath**
- xvi. **Mr. K. E. Nadeeshan**
- xvii. **Mr. W. M. Jagath Rathna Kumara**



- xviii. **Mr. W. G. Premathilaka**
- xix. **Mr. G. K. Sgararathna**
- xx. **Mr. H. Anura**

**All of Hulandawa Estate, Akuressa.**

19.

- i. **S. P. Rathnaseeli**
- ii. **M. Chandana**
- iii. **R. R. Wathsala**
- iv. **M. Kasuni Sewwandi**
- v. **K. T. Jayathilaka**
- vi. **I. D. Samarawickrama**
- vii. **W. M. I. Sampath**
- viii. **D. W. Lasantha Kumara**
- ix. **H. A Sugath**
- x. **E. H. Kaushalya Madushani**
- xi. **S. S. Gunasekara**
- xii. **E.W. Kapila**
- xiii. **Vineetha Liyanage**
- xiv. **P. Tlilanka Sewwandi**
- xv. **D. M. Jayarathna**
- xvi. **A. K. P. Sunil Shantha**

**All of Tennahena Estate, Pitabeddara**

20.

- i. **Mr. R. Sivasubramaniam**
- ii. **Mrs. M. Sakila**
- iii. **Mr. M. V. Peramaiah**
- iv. **Mrs. S. Malavilley**
- v. **Mrs. S. Vasanthamalar**
- vi. **Mrs. M. Siripiya**
- vii. **Mrs. N. Pushpaleela**
- viii. **Mr. Thiruganasambanda Moorthi**
- ix. **Mr. Dinesh Priyantha**
- x. **Mrs. S. Sivayogam**
- xi. **Mr. K. Kaleichelvam**
- xii. **Mr. E. D. N. Edirisinghe**
- xiii. **Mr. A. Viniston**
- xiv. **Mr. P. Pradeepan**

**All of Pingarawa Estate, Namunukula.**

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Dr. Romesh De Silva, P.C. with Sahiru Jasinghe, instructed by Sanath Wijewardena for the Petitioner.

Ms. Sumathi Dharmawardena, P.C. A.S.G with Navodi De Zoysa. S.C. for the 1<sup>st</sup> Respondents.

S. H. A. Mohammed with Pramod Polpitiyage, instructed by Sanjeewa Kaluarachchi for the 2<sup>nd</sup> Respondent.

Supported on: Disposed by way of Written Submissions

Written Submissions on: 09.08.2024 by the Petitioner  
03.07.2024 by the 1<sup>st</sup> Respondent  
04.07.2024 by the 2<sup>nd</sup> Respondent

Decided on: 18.12.2024

**MOHAMMED LAFFAR, J.**

Considering the substantial similarity of the facts in case CA/WRT/600/21 and CA/WRT/601/21, the judgment in this matter will be binding on case CA/WRT/600/21 and CA/WRT/601/21 as well.

The Petitioners are seeking a mandate, *inter alia*, in the nature of:

1. A Writ of Certiorari quashing the documents marked as 'P8' and 'P15'
2. A Writ of Certiorari quashing any other decisions of the 1<sup>st</sup> Respondent made on a similar basis as the documents marked 'P8';
3. A Writ of Prohibition prohibiting and restraining the 1<sup>st</sup> Respondent, or any other person acting under the 1<sup>st</sup> Respondent, from taking any enforcement action against the Petitioner Company under and in terms of the decisions marked 'P8' and 'P15';

4. A Writ of Prohibition prohibiting and restraining the 1<sup>st</sup> Respondent, or any other person acting under the 1<sup>st</sup> Respondent, from making any further decisions on an identical basis to the documents marked 'P8'.

On 03.06.2024, the Respondents raised three preliminary objections regarding the maintainability of this action. Thereafter, Counsel appearing for all parties consented to dispose of the inquiry pertaining to the preliminary objections by way of written submissions.

The preliminary objections raised by the Respondents are as follows:

- a) Legal action has not been instituted as provided under the EPF Act against the Petitioner. Therefore, in the event that legal action is instituted, the Petitioner will have an opportunity, in terms of the provisions set out in the EPF Act, to show cause before the learned Magistrate. Accordingly, the subject matter is premature as there is an alternative remedy available to the Petitioner.
- b) The Petitioner is seeking to quash the notice issued by the Commissioner General of Labour, which is not a prerequisite for instituting legal action. Therefore, the application before Your Lordships' Court is futile.
- c) The Petitioner has willfully suppressed material facts and has failed to adhere to the doctrine of *uberrima fides*.

## **FACTUAL MATRIX**

The Petitioner is a company engaged in the plantation industry and has entered into Collective Agreements with the 2<sup>nd</sup> Respondent, a trade union representing its employees. However, the Collective Agreement applicable to the relevant period expired on 30.09.2019. Following this, the 2<sup>nd</sup> Respondent demanded a 25% salary increment for the Petitioner's employees.

The Petitioner, citing financial constraints and concerns over sustainability, refused to agree to this demand. Despite engaging in discussions, no consensus was reached, and the Petitioner declined to sign a new Collective

Agreement incorporating the salary increase. The Petitioner maintains that its decision was made in the best interests of its operations and foresaw potential adverse impacts, including on wage standards, collective bargaining dynamics, and overall profitability.

The refusal to grant the increment prompted the 2<sup>nd</sup> Respondent to instigate strike actions across the Petitioner's plantations. These strikes, compelled the Petitioner to pay an additional sum to the workers. The Petitioner states that this payment was made purely to mitigate the operational crisis and was explicitly communicated as not forming part of the employees' "earnings" for the purposes of calculating contributions under the Employees' Provident Fund Act No. 15 of 1958 and the Employees' Trust Fund Act No. 46 of 1980. This understanding, according to the Petitioner, was agreed upon by both the 2<sup>nd</sup> Respondent and its members, with the payment being accepted without protest. This led the 1<sup>st</sup> Respondent to initiate inquiries into the matter.

The inquiries culminated in decisions issued by the 1<sup>st</sup> Respondent (marked *P8*), holding the Petitioner liable to pay superannuation contributions on the additional 25% payment. The Petitioner asserts that these decisions were arbitrary, ultra vires, and made with improper motives, favoring the 2<sup>nd</sup> Respondent. Following these decisions, the 1<sup>st</sup> Respondent issued Notices (marked *P15*), directing the Petitioner to comply. The Petitioner states that thereafter that the dispute regarding the 25% increment was referred for compulsory arbitration under the Industrial Disputes Act No. 62 of 1957. The arbitration proceedings, however, were terminated.

It is conceded by the 1<sup>st</sup> Respondent that all actions undertaken, including the issuance of documents marked as *P7*, *P8*, and *P15*, were in accordance with its statutory powers under the Industrial Disputes Act.

In considering the dispute, the 1<sup>st</sup> Respondent took into account the provisions of the Collective Agreements between the 2<sup>nd</sup> Respondent and the Employers' Federation of Ceylon, of which the Petitioner is a member. These agreements stipulated a 25% increase in salaries, effective from 01.10.2019. This increment is reflected in certified gazettes, No. 2237/17 dated 20.07.2020 and No. 2212/13 dated 26.01.2021, which were marked as *1R19* and *1R20*. The 1<sup>st</sup> Respondent submits that this salary increase is a

contractual obligation under the agreements and forms part of the employees' earnings.

The 1<sup>st</sup> Respondent refutes the Petitioner's submission that the 25% increase constitutes "extra payment" and submits that the increment must be considered part of the employees' earnings under Section 10, read with Section 16 of the Employees' Provident Fund Act (as amended). The 1<sup>st</sup> Respondent further submits that the Petitioner has already conceded that the salary increment was effected, reinforcing its position that the incremented salary is subject to statutory contributions.

### **PRELIMINARY OBJECTIONS**

In dealing with the preliminary objections raised by the 1<sup>st</sup> Respondent, following the Petitioner's application, legal action has already been initiated against the Petitioner in the Magistrate's Court of Warakapola concerning statutory dues owed to "certain workmen" (3<sup>rd</sup> to 20<sup>th</sup> Respondents). The Petitioner failed to comply with previous notices issued by the 1<sup>st</sup> Respondent requiring payment of these dues, leading to the issuance of a further notice (P15) warning of legal action under Section 38(2) of the EPF Act.

*"38(2) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Commissioner is of opinion that it is impracticable or inexpedient to recover that sum under section 17 or under subsection (1) of this section or where the full amount due has not been recovered by seizure and sale, then, he may issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer, to the Magistrate having jurisdiction in the division in which the place of work of the member or members of the Fund in respect of whom default is made, is situate. The Magistrate shall, thereupon, summon such employer before him to show cause why further proceedings for the recovery of the sum due under this Act should not be taken against him and in default of sufficient cause being shown, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of section 291 (except paragraphs (a), (d) and (i) of subsection (1) thereof) of the Code of Criminal Procedure Act, relating to the default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any direction*

*which, by the provisions of that subsection, he could have made at the time of imposing such sentence."*

According to Section 38(2), the Magistrate will summon the employer to show cause why further proceedings for recovery of dues should not be taken. This provision guarantees the Petitioner a statutory right to challenge the action before the Magistrate's Court. Therefore, the 1<sup>st</sup> Respondent submits that the Petitioner should first exhaust the statutory remedy before seeking judicial intervention.

It is submitted that Writ jurisdiction is discretionary and will not be exercised when an alternative statutory remedy exists, especially where major factual disputes are involved. The 1<sup>st</sup> Respondent further submits that invoking Writ jurisdiction prematurely would cause unnecessary delay, affecting the statutory dues owed to the workers, and would grant the Petitioner a "second bite of the cherry" by circumventing the statutory process.

It is settled law that when an effective and alternative remedy is provided for in law, this Court will not exercise its Writ jurisdiction.

Thereby, in **Pinnaduwege Baby Mallika Chandraseana Vs C.W Abeysuriya**<sup>1</sup> this Court held that,

*"Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him."*

Hence, prior to invoking the Writ Jurisdiction of this Court, the Petitioner must have exhausted alternative remedies available to him in the first instance.

In light of these submissions, the Magistrate's Court is deemed the most appropriate forum for resolving the factual disputes. If the Petitioner remains aggrieved by the decision, it can seek review of this court as a last resort. Therefore, the preliminary objections raised by the 1st Respondent should be upheld.

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<sup>1</sup> CA/WRIT/457/2019

Further in assessing the preliminary objection b) raised by the 1<sup>st</sup> Respondent, this Court agrees with the submission that the notice issued by the Commissioner General of Labour, is not a prerequisite for instituting legal action. Thereby this preliminary objection is upheld as well.

In dealing with the preliminary objection raised by the 2<sup>nd</sup> Respondent, it is submitted by the Petitioner that no deductions were made from employees' wages for the additional 25% salary increase in paragraphs 22 and 23 of the Petition. However, it is evident through salary slips marked **2R1(a), 2R1(b), and 2R1(c)** showing that the Petitioner did make the required EPF deductions for the salary increase, contrary to the Petitioner's claims. The Petitioner also failed to comply with the directive from the Assistant Commissioner of Labour, which required the remittance of EPF contributions to the Fund.

Thereby in **Jayaweera v Assistant Commissioner of Agrarian Services Ratnapura and another (1996) 2 SLR 70**, Jayasuriya J observed as follows:

*"the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as matter of course, as a matter of right, or as a matter of routine. Even if he is entitled to relief, still the court has the discretion to deny him relief having regard to this conduct, laches, wavier, submission to jurisdiction - are all valid impediments which stand against the grant of relief."*

For the foregoing reasons, I uphold the preliminary objection of the 2<sup>nd</sup> Respondent. Thus, the Petition is liable to be dismissed.

Application dismissed. No costs.

**JUDGE OF THE COURT OF APPEAL**