

X (EMPLOYER)
V.
DEPUTY COMMISSIONER OF LABOUR AND OTHERS

COURT OF APPEAL
GUNASEKERA, J
C.A. 46/91; 47/91
M.C. KANDY 84430 & 85865
JUNE 28 AND JULY 02 1991

Evidence - Payment of Gratuity Act, No. 12 of 1983 ss. 8 (1) and (2) - Certificates

of Commissioner of Labour - Finality - Meaning of "prima facie evidence" - Showing cause

Held:

Showing cause against certificates issued under the Payment of Gratuity Act No. 12 of 1983, S.8(1) is not limited to showing that the petitioner was not the person named as defaulter in the certificate, that he has paid the amount specified in the certificate and that he is not resident within the jurisdiction of the Magistrate's Court but also extends to showing that the sums specified in the certificates are not due or that they have been incorrectly calculated because under S.8(2) of the Act, the Commissioner's certificate is only prima facie evidence. It is open to the petitioner to displace the effect of the prima facie evidence by offering further evidence of an inconsistent or contradictory nature.

Cases referred to:

1. *Mohideen V. Assistant Commissioner of Co-operative Development of Kalmunai - S.C. 642/75 - S.C. minutes of 13.03.77.*
2. *Danny V. Commissioner of Labour CA 1293/83 - C.A. Minute of 16.12.1988.*

APPLICATIONS in revision of the Orders of the Magistrate of Kandy.

S.M. Fernando with Miss H. Fernando & W.M. Gunawardena for the petitioner.

Miss K. Sivapathasunderam for 2nd respondent

S. Sriskandaraja, S.C. for 1st and 3rd respondents.

Cur. adv. vult.

31 July 1991

GUNASEKERA, J.

Two certificates had been filed by the 1st Respondent, the Deputy Commissioner of Labour at times relevant to the applications dated 24.10.89 & 18.9.89 respectively before the Magistrate Kandy, that sums of Rs. 24,000 & Rs. 12,900 were due from the Petitioner as gratuity payable to two workmen H. D. Fonseka and A. M. P. Sammy de Silva the 2nd Respondents to the applications. These two applications have been filed before the learned Magistrate in terms of section 8(1) of the Payment of Gratuity Act No. 12 of 1983.

After proceedings were instituted before the learned Magistrate for the recovery of the above mentioned sums of money, the Petitioner sought leave of the learned Magistrate to show cause that neither a part nor the whole of the sums referred to in the certificates were due from the Petitioner. The Labour Officer who appeared for the Deputy Commissioner of Labour objected to the application made on behalf of the Petitioner to show cause that the amounts mentioned

in the certificates were not due and that the sums had been incorrectly calculated. The basis of the objection of the Deputy Commissioner of Labour before the Magistrate was that section 8 of the Payment of Gratuity Act contemplated an inquiry being held, notice of which should be given to the defaulter together with an opportunity for him to satisfy the Commissioner that the amount is not payable by way of gratuity. It was then submitted that once a certificate is filed by the Commissioner after such inquiry in order to recover the sums specified in proceedings taken before the Magistrate that it was not open to the defaulter to show cause that the sums specified in the certificate is not due.

The learned Magistrate after consideration of the submissions made on behalf of the Petitioner and the Deputy Commissioner of Labour held that the only cause that the Petitioner could have shown was to establish:

- (a) that the Petitioner was not the person named as the defaulter in the certificate,
- (b) that he has paid the amount specified in the certificate,
- (c) that the defaulter was not resident within the jurisdiction of the Magistrate's court,

and refused application made on behalf of the Petitioner to show cause that a part of the whole of the sums mentioned in the certificates were not due or that the sums so specified were incorrectly calculated.

The Petitioner seeks to canvass the correctness of the order made by the Magistrate refusing the application made on behalf of the Petitioner to show cause that the sums specified in the certificate were not due or that they were incorrectly calculated.

Section 8 of the Payment of Gratuity Act No. 12 of 1983 reads as follows:

- (1) - Where any default is made in the Payment of any sum due as gratuity under this Act or where the gratuity due under this Act cannot be recovered under the provisions of section 4 or under the provisions of section 17(5) of the Land Acquisition Act,

the Commissioner may issue a certificate after such inquiry as he may deem necessary, stating the sum due as gratuity and the name and place of residence of the defaulter, to the Magistrate having jurisdiction in the division in which the estate or establishment is situate and the Magistrate shall, thereupon, summon the defaulter before him to show cause why further proceedings for the recovery of the sums due as gratuity under this Act should not be taken against him and in default of sufficient cause being shown the sum in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable by fine or not punishable with imprisonment. . .

Sub Section 2 to section 8 states that the Commissioner's certificate *shall be prima facie evidence* that the amount due under this Act from the defaulter has been duly calculated, and that the amount is in default.

Learned counsel for the Petitioner submitted that unlike in the case of the recovery provisions under sections 130 of the Inland Revenue Act, section 59(4) of the Co-operative Societies Law, section 28(3) of the Employee's Trust Fund Act and section 38(2) of the Employee's Provident Fund Act where the correctness of the particulars given in the certificates cannot be examined or questioned by the learned Magistrate, the working of section 8(2) of the Payment of Gratuity Act is different and by stating the Commissioner's certificate "*shall be prima facie evidence*" that the amount due under this Act from the defaulter has been duly calculated, and that the amount is in default the legislature intended by clear and unequivocal terms to permit a defaulter named in the certificates filed before a Magistrate to show cause either by leading evidence or otherwise that the sums mentioned in the certificate was not due or had been incorrectly calculated.

I am inclined to agree with this contention of the learned counsel for the Petitioner. "Prima facie evidence is not conclusive evidence, it is open to the opposing party to rebut that evidence by proving the contrary. *G. L. Peries - Law of Evidence in Sri Lanka 1974 edition* at page 31 dealing with prima facie evidence and conclusive evidence states thus" The evidence adduced by a party in support of a fact in issue is said to be prima facie evidence when it is sufficiently weighty to entitle a reasonable man to decide the issue

in his favour, although a reasonable man need not necessarily do so. Prima facie evidence in its usual signification denotes prima facie proof of an issue, the burden of proving which is on the party giving that evidence. However the distinguishing characteristic of prima facie evidence is that it leaves room for the other party to displace the effect of such evidence by offering further evidence of an inconsistent or contradictory nature. It is only in the absence of further evidence from the other side that prima facie evidence enables the party giving it to discharge its onus".

While the effect of prima facie evidence is tentative, conclusive evidence is characterised by finality, there is no opportunity for the rebuttal of conclusive evidence. Thus it is clear on a reading of subsection 2 that the Commissioner's certificate is to be regarded (only as prima facie evidence) that the amount is due under the Act from the defaulter and has been duly calculated and that the amount is in default. Thus the legislature by using the words that the certificate is only prima facie evidence by unequivocal and unambiguous language has made provision for the defaulter to show cause and displace the effect of the prima facie evidence by offering further evidence of an inconsistent or contradictory nature.

The learned State Counsel appearing for the 1st and 3rd Respondents and the learned counsel appearing for the 2nd Respondent (workmen concerned) contended that use of the words "the Magistrate shall thereupon summon the defaulter before him to show cause why further proceedings for the recovery of the sum due should not be taken" limits the scope of the cause that can be shown by the defaulter. They contended that the limits of the cause that could be shown as to why further proceedings should not be taken has been laid down by the Supreme court in *S.H.L. Mohideen V. The Assistant Commissioner of Co-operative Development of Kalmunai* (1) argued on 4.4.77 & decided on 13.3.77 and in *S.D.Danny V Commissioner of Labour* (2) argued on 1.9.88 and decided 16.12.88. With respect whilst I agree with the decisions cited by learned counsel for the Respondents the sections dealing with the recovery provision in the statutes that came up for consideration were different. The 1st of those cases were under the provisions of section 59(4) of the Co-operative Societies Law. Section 59(6) of that law stated that "Nothing in this section shall authorise or require a District Court or a Magistrate Court thereunder to consider, examine

or decide the correctness of any statement in the certificate of the Registrar, and the latter case was one where recovery proceedings were taken under section 38(2) of the Employee's Provident Fund Act and section 38(3) of the said Act states "the correctness of any statement of the certificate issued by the Commissioner for the purpose 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 authorise 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 this Act from the defaulting employer has been duly calculated and that such amount is in default". Similar provision is also made in section 130(2) of the Inland Revenue Act and section 28(4) of the Employee's Trust Fund Act where finality and conclusiveness are given by the statute to the particulars stated in the certificates for the recovery of sums due thereunder. In the instant case however as stated above the particulars given in the certificate is only prima facie evidence of the matters stated therein and it is in my view open to the defaulter to contravert the position that the amount is due or that the amount has been incorrectly calculated by leading oral or documentary evidence.

Thus I set aside the order made by the learned Magistrate on 14.12.1990 in case No. 84430/89 pertaining to application C.A.46/91 & 85865, pertaining to C.A.47/91 and direct the learned Magistrate to permit the Petitioner to show cause by leading evidence or otherwise that the amounts referred to in the certificates or any part thereof are not due. There will be no costs.

Application allowed.