

**RAJAPAKSE AND OTHERS**  
**v.**  
**DISSANAYAKE, LABOUR OFFICER AND ANOTHER**

SUPREME COURT

G. P. S. DE SILVA, C.J.,

WIJETUNGE, J. AND

ANANDACOOMARASWAMY, J.

S.C. APPEAL NO. 50/96

H.C. COLOMBO NO. HCMCA 441/95

M.C. COLOMBO NO. 91879/3

AUGUST 27TH, OCTOBER 23RD, 1997.

DECEMBER 15TH, 1997, JANUARY 28TH, MARCH 16TH AND

MAY 18TH, 1998.

*Shop and Office Employees Act – Failure to pay remuneration to an employee – Offence under S. 52 (1) read with s. 19 (1) (b) (iii) of the Act – Burden of proof as to payment – Meaning of "employee" – Sections 20 and 68 (2) of the Act.*

Appellants who were the employers of Cecil Perera employed at the office of Lucksun Industries as its General Manager were convicted of the offence of failing to pay remuneration due to Cecil Perera in contravention of S. 19 (1) (b) (iii) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, an offence punishable under s. 52 (i).

**Held:**

1. In terms of s. 52 (4) of the Act the burden of proving that the remuneration due was paid is on the employer.
2. In the light of sections 20 and 68 (2) of the Act, Cecil Perera though designated as General Manager was an "employee" within the meaning of the Act.

Per G. P. S. de Silva, C.J.

"On a reading of the entire Act, it seems to me that there is no warrant for giving a narrow or restrictive meaning to the word "employee". To do so would tend to defeat the object of the Act and render its salutary provisions largely nugatory."

**APPEAL** from the judgment of the High Court of Colombo.

*R. K. W. Goonesekera with Crosette-Tambiah* for the appellants.

*U. Egalahewa* S.C for respondents.

*Cur. adv. vult.*

May 21, 1998

**G. P. S. DE SILVA, C.J.**

The appellants who were the employers of Cecil Perera were charged in the Magistrate's Court with having failed to pay the balance remuneration due to the said Cecil Perera for the months of (i) 1.11.84 to 30.11.84, (ii) 1.12.84 to 31.12.84, (iii) 1.1.85 to 31.1.85, in contravention of section 19 (1) (b) (iii) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, an offence punishable under section 52 (1). It was the case for the prosecution that Cecil Perera was employed at the office of Lucksun Industries, 379, Prince of Wales Avenue, Colombo 14, as its General Manager on a salary of Rs. 15,000 per month. The prosecution alleged that out of the said sum of Rs. 15,000 Cecil Perera was in fact paid only Rs. 3,000 per month and the balance remuneration due to him was Rs. 12,000 per month.

Cecil Perera was appointed General Manager of Lucksun Industries with effect from 1.3.84. Vide the letter dated 23.2.84, written by the 1st appellant (Managing Partner of Lucksun Industries) marked P1.

It is in evidence that prior to his appointment as General Manager, Cecil Perera was a self-employed businessman who sold imported goods, electrical equipment, etc., and maintained an "after sales service" at his workshop. The 1st appellant was a customer of Cecil Perera for about 5 years prior to March, 1984 and there developed a close friendship between them over the years. Since 1982 Cecil Perera "provided at his workshop the technical service facility for Rowenta household appliances sold by Lucksun Industries virtually to the exclusion of (his) other business and customers" (vide paragraph 3 of A4).

The case for the defence was that the remuneration payable to Cecil Perera as General Manager of Lucksun Industries was only Rs. 3,000 and that the said sum of Rs. 3,000 was duly paid to him. The defence further contended that an additional sum of Rs. 12,000 was payable to him on the basis of the technical services provided by Cecil Perera for Rowenta appliances sold by Lucksun Industries. In short, the position of the defence was that although a total sum of Rs. 15,000 per month was payable to Cecil Perera, yet the remuneration due to him as **General Manager of Lucksun Industries** was no more than Rs. 3,000. Receipts were produced to prove the payment of Rs. 3,000 per month.

The case for the defence, however, is **totally inconsistent with the documentary evidence**, placed before the court. The two crucial documents are P1 and P2.

P1, the letter of appointment, reads thus:

(P1)

Lucksun Industries,  
23 February, 1984.

"Mr. E. Cecil Perera,  
'Devika'  
45, Off Templar Road,  
Mount Lavinia.

My dear Cecil,

Having made my initial contact with you as a customer almost five years ago and our close association ever since, both socially and in business, particularly in respect of your wholehearted collaboration

with me in providing the technical service facility for Rowenta for the past two years to date which you have handled so very well for Lucksun Industries, and to the numerous other opportunities I have had, to be able to judge at first hand, your dynamic, energetic, self-motivated manner with a senior and mature outlook, and your ability to relate well and to communicate effectively with different types of people at various levels of responsibility in commercial, industrial and government sectors – coming naturally from your rich and wide work experience of the past, and your proven skills in widely different fields in management and industry with international organisations; it is my pleasure to invite you to join the management of my organisation on a full-time basis with effect from 1st March, 1984.

In view of this total involvement with LUCKSUN INDUSTRIES I naturally will expect you to phase out all your present personal business activities other than the continuation under your total control of the ROWENTA TECHNICAL FACILITY, within the next three months, when such private business activities should cease, in the best interest of the company.

As General Manager, Lucksun Industries, you will report direct to me and will be responsible to identify, analyse, develop and recommend significant changes as may be necessary or desirable to raise and enhance the corporate image of LUCKSUN INDUSTRIES and will assume responsibility to expand and enlarge the scope of the company in areas of Imports and Exports, Marketing and Distribution, Advertising and Sales Promotion, Manufacturing, Investments, Acquisitions, Joint Ventures, Technology and Personnel Upgrading and Training, covering all aspects of Services, Trading and Management for LUCKSUN INDUSTRIES.

Considering your past very successful and proven Senior Management experience and the challenge of the present opportunity in today's context as General Manager, Lucksun Industries, I propose to provide you a very generous and competitive compensation package, which would include a company car and other perquisites, comprising:-

1. A salary of Rupees fifteen thousand per mensem.
2. A company-maintained car for official and private use.
3. Reimbursement of business and entertainment expenses.

4. Membership cover under scheme A of the Insurance Corporation of Sri Lanka under the Surgical and Hospital expenses scheme, applicable to employee, spouse and children.
5. Eligibility and participation in the EPF and other statutory funds/taxes as applicable.

Needless to say that you will handle your interesting and challenging assignment with the greatest diplomacy and tact and with the strictest confidentiality in respect to the company's business interests – whilst being free at all times to seek my personal views and opinions on any matter whatsoever.

Please signify in the space below your acceptance of this letter of appointment made out in duplicate returning the duplicate copy for my records.

While welcoming you to the Lucksun family, you have my very best and sincere good wishes for a long and successful association for our mutual benefit, and assure you of my fullest support and co-operation, in all your endeavours to enhance and upgrade the corporate image and progress of the company.

Very sincerely yours,  
LUCKSUN INDUSTRIES

Sgd.

D. L. Rajapakse,  
Managing Partner.

Signed in acceptance  
Sgd.  
E. Cecil Perera  
Date: 23rd February, 1984."

The services of Cecil Perera were terminated on 7.3.85 by letter P2 written by the 1st appellant, P2 reads as follows:

(P2)

LUCKSUN INDUSTRIES

"24th May, 1985.

Mr. E. Cecil Perera,  
'Devika',  
No. 45, Off Templar's Road,  
Mount Lavinia.

Dear Sir,

Consequent to the Disciplinary Inquiry held against you by Mr. D. W. Fernando and the report that has been filed with me finding you guilty, I have now decided to dismiss you from service with effect from 7th March, 1985.

I find from my records that a sum of Rs. 18,000 (Eighteen Thousand only) made up as follows is due to you:

Salary for February, 1985	Rs. 15,000/-
Salary for six days in March, 1985	<u>Rs. 3,000/-</u>
	<u>Rs. 18,000/-</u>

Please find an "A/C Payee" cheque No. B322-046560 for Rs. 18,000 attached accordingly, I shall be glad to have your receipt for same.

Thanking you,  
Yours faithfully,  
LUCKSUN INDUSTRIES

Sgd. D. L. Rajapakse  
Managing Director."

On a reading of P1 and P2 it is clear beyond doubt that the salary payable to Cecil Perera as General Manager of Lucksun Industries was fixed at Rs. 15,000 per month. However, Mr. R. K. W. Goonesekera for the appellants referred us to the testimony of Cecil Perera and of the 1st appellant and strenuously contended that there was a

subsequent oral agreement whereby the parties agreed to fix the salary payable to Cecil Perera as General Manager at Rs. 3,000 per month and the balance sum of Rs. 12,000 was payable for the technical services and facilities provided by Cecil Perera. On the other hand, state counsel relied on portions of the oral evidence given by Cecil Perera which tended to negative the existence of such an agreement. Cecil Perera in his evidence stated that Lucksun Industries was at that time in financial difficulties, and owing to the close association between him and the 1st appellant for the past several years he did not insist on the payment of the full sum of Rs. 15,000 as stated in P1. Cecil Perera stated in his evidence that he paid some of the workmen "out of his own money" as he felt sorry for his friend, the 1st appellant.

On a consideration of the entirety of the evidence in regard to the alleged subsequent oral variation of the salary of Cecil Perera, it seems to me that the evidence is at best of an equivocal nature. The position taken up by the defence is manifestly in direct conflict with the documentary evidence referred to above. I am of the opinion that the Magistrate has correctly evaluated that oral evidence in the light of the cogent and unambiguous documentary evidence and has rightly held that a sum of Rs. 15,000 per month was the salary payable to Cecil Perera, and of this sum only Rs. 3,000 per month was in fact paid to him. There is no satisfactory evidence to prove that the balance sum of Rs. 12,000 was paid to Cecil Perera. In this connection the Magistrate has in the course of her judgment correctly referred to section 52 (4) of the Act which expressly provides that the burden of proving that the balance remuneration was paid lies on the employer. Thus, on the facts, the conviction is well-supported by the evidence, in particular P1 and P2.

The next submission of Mr. R. K. W. Goonesekera was that the Shop and Office Employees (Regulation of Employment and Remuneration) Act has no application to the instant case. Mr. Goonesekera stressed the fact that Cecil Perera was holding a "senior managerial position"; his appointment was to a "senior executive grade". Counsel contended that the Act was intended to "protect" persons who were below "the managerial level"; the focus was on those who are not in a position to assert their rights and vindicate their claims against the "management". Reliance was placed on the definition of "employer" in section 68 (1) which reads thus :

"Employer –

- (a) .....
- (b) in relation to any office, means the person carrying on, or for the time being responsible for the management of, the business for the purpose of which the office is maintained."

On the other hand, state counsel referred us to section 3 (5) of the Act and argued that the persons excluded from the purview of the Act are those who hold "an executive or managerial position in a public institution. . ." The expression "public institution" is defined as "any corporation, board or other body established by or under any written law, other than the Companies Ordinance, with capital wholly or partly provided by the Government by way of grant, loan or other form". State counsel also referred us to section 68 (2), the material part of which reads thus: "For the purposes of this Act, a person shall be deemed to be employed in or about the business of a shop or office if he is wholly or mainly employed.

- (a) .....
- (b) in the service of the employer upon any work, whether in the shop or office or outside it, which is ancillary to the business carried on in that shop or office, and notwithstanding that he receives no reward for his labour; but he shall not be deemed to be so employed if his only employment in the service of the employer is in the capacity of a caretaker or watcher."

In considering the question whether Cecil Perera who was appointed as General Manager in terms of P1 falls within the purview of the Act, it is intensely relevant to note that the Shop and Office Employees (Regulation of Employment and Remuneration) Act is an important piece of social legislation enacted in 1954 in the context of the emerging concept of a welfare state. Part III of the Act which deals with "regulation of remuneration" defines the expression "employee" in very wide terms – "In this part, employee means a person employed in or about the business of a shop or office". On a reading of the entire Act, it seems to me that there is no warrant for giving a narrow or restrictive meaning to the word "employee". To do so would tend to defeat the object of the Act and render its salutary provisions largely nugatory. The facts in this case reveal that Cecil Perera, though designated as General Manager, was in as vulnerable



a position as any employee subordinate to him. I hold that the Act does not envisage a distinction between persons holding "a managerial position" like Cecil Perera and other subordinate employees, as contended for on behalf of the appellants.

Finally, Mr. Goonesekera submitted that the Magistrate was in grave error in imposing a fine of Rs. 135,000 on the appellants. With this submission, I agree. Apart from the balance remuneration due for the 3 months set out in the charge, the Magistrate has, contrary to the provisions of section 53 (1) of the Act taken into account a further period of 8 months. In so doing the Magistrate has overlooked the fact that section 53 (1) expressly limits the period to "four years preceding the date on which complaint under section 136 of the Code of Criminal Procedure Act was made to court". It was agreed that the relevant date was 19.10.88. State counsel rightly conceded that the total fine the Magistrate could have lawfully imposed on the appellants is Rs. 41,000 (Rs. 36,000 for the 3 months set out in the charge plus Rs. 5,000). I accordingly set aside the fine of Rs. 135,000 imposed on the appellants, and substitute therefor a fine of Rs. 41,000.

Subject to the aforesaid variation in the quantum of the fine, the appeals are dismissed.

**WIJETUNGA, J.** – I agree.

**ANANDACOOMARASWAMY, J.** – I agree.

*Appeal dismissed.*

*Quantum of fine varied.*