

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writ of *Certiorari*.

Industrial Development Board of Ceylon,
No. 615, Galle Road,
Katubadda, Moratuwa.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/17/2022

1. M.W.A.S.B. Rambukwella,
No. 22/B/4,
Rukmalgama Housing Scheme,
Kottawa, Pannipitiya.
2. Commissioner General of Labour,
Labour Secretariat,
No. 41,
Kirula Road, Colombo 05.
3. Minister of Labour,
6th Floor, Mehewara Piyasa,
Narahenpita, Colombo 05.
4. Kapila M. Sarathchandra,
The Arbitrator,
No. 169,
Mapalangedara, Dulapitiya.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

- Before:** Mayadunne Corea, J
Mahen Gopallawa, J
- Counsel:** Dr. Thashira Gunathilake with Nimani Amanda and Udani Dissanayake
instructed by Buddhika Alagiyawanna for the Petitioner.
Nishadi Wickramasinghe for the 1st Respondent.
Abigail Jayakody, S.C. for the 2nd, 3rd and 5th Respondents.
- Argued on:** 03.12.2025.
- Written Submissions:** For the Petitioner on 28.01.2026.
For the 1st Respondent on 23.01.2026.
- Decided on:** 20.03.2026.

Mayadunne Corea J

The Petitioner in this application sought, *inter alia*, the following reliefs:

- “b) *Quash the arbitral award of the 4th Respondent marked P28 dated 15/04/2020 and the Extraordinary Gazette No. 2188/37 dated 13.08.2020 published by the 2nd Respondent marked P29 by Writ of Certiorari*
- d) *Quash the decision of the 2nd Respondent to institute the action under case no. 90847/Labour in Magistrate Court of Moratuwa against the Petitioner by Writ of Certiorari”*

The facts in brief are as follows. By a letter dated 06.10.2004, the 1st Respondent was appointed to a permanent post of Chief Security Officer (Grade V) of the Petitioner. Subsequently, the Department of Management Services introduced an amendment to the existing salary scheme by virtue of the Management Services Circular no. 30 dated 22.09.2006. Thereby, a new salary scheme was introduced and steps were taken to restructure the Petitioner's organization. The Petitioner states that the post of Chief Security Officer (Grade V) was absorbed within the new cadre as a special post under the salary code of MA 5-2. Further, it was contended that the post of Security Officer was introduced as new cadre under the salary code of JM 1-1, which is alleged to be a position parallel to that of the previous Executive Grade IV.

Thereafter, the Petitioner advertised vacancies for the post of Security Officer under the salary code of JM 1-1, whereby the Petitioner's internal staff were also eligible for promotion to the post of Junior Management under the salary code JM 1-1. Accordingly, the Petitioner issued a letter for the promotion of the 1st Respondent from MA 5-2 to JM 1-1. However, the 1st Respondent refused to accept the promotion on the basis that he was appointed to a junior position and was placed on a lower salary code. Therefore, the 1st Respondent was kept at the same salary code of MA 5-2 until retirement in 2015.

Upon a complaint by the 1st Respondent, the 3rd Respondent referred the dispute between the Petitioner and the 1st Respondent for arbitration. Following the arbitration proceedings, the 4th Respondent made an award in favour of the 1st Respondent (P28 and P29). Hence, this Writ application.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The 4th Respondent failed to consider the evidence placed before him.
- The 4th Respondent's finding that the 1st Respondent was placed in a lower position is erroneous.
- The 4th Respondent's finding that the 1st Respondent was denied a promotion to Grade IV is erroneous.
- The 4th Respondent's calculation of the award made in favour of the 1st Respondent is erroneous.
- The award contravenes with the principles of natural justice.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner is guilty of laches.
- The Petitioner has misrepresented facts and failed to disclose material facts.
- The Petitioner's application is frivolous, vexatious and futile.
- The Petitioner has failed to name necessary parties.

Analysis

It is common ground that the 1st Respondent had joined the Petitioner initially on a temporary basis in the capacity of Chief Security Officer (Executive Grade V) from 02.04.2001 (P1). Thereafter, the 1st Respondent was appointed to the permanent post of Chief Security Officer (Grade V) with effect from 03.09.2001 (P5). The letter of appointment marked as P5 reflects the 1st Respondent's salary code and that he has been subjected to a probationary period. As stated in the said letter of appointment, the 1st Respondent was permitted to remain in employment until he reached the age of 55 years. Subsequently, by letter dated 06.10.2004, marked and tendered as P6, the 1st Respondent had been confirmed as Chief Security Officer (Grade V). The said appointment is operative with effect from 03.09.2001.

It is also not disputed that the 1st Respondent was eligible for promotion upon completion of seven years from the date of commencement in his respective existing grade. The 1st Respondent would have been eligible for his next promotion to Executive Grade IV in the year 2008. However, it appears there had been a restructuring process at the Petitioner institution and the Department of Management Services had by its Management Service Circular no. 30 made a salary revision (P8). As per paragraph 5 of P8, a proposition had been made to abolish the existing promotion scheme and create a new promotion scheme. As per annexure 3 of the said Circular it appears that the Petitioner too is covered by the said Circular. Thereafter, on 21.12.2006, a further Circular had been issued restructuring the positions of the employees and placing them on a salary structure that is stipulated thereon. It was contended on behalf of the Petitioner that upon the said Circulars coming into effect, the post of Chief Security Officer (Grade V) had been absorbed into a special post under the salary code MA 5-2. It was also contended that this post and the salary code was created only to be applicable to the serving officers and the Petitioner had been

informed to formulate their new Scheme of Recruitment. Accordingly, as per the newly formulated Scheme of Recruitment, the post of Security Officer had been placed under JM 1-1 salary code. This restructuring resulted in the 1st Respondent being placed under the salary code of MA 5-2 (Management Assistant) and would be placed on JM 1-1 (Junior Manager). It is common ground that the 1st Respondent had made an application for him to be placed under JM 1-1 salary code. It was contended that, by the time he made this application, which was on 11.02.2014, he had been with the Petitioner for nearly 13 years. However, subsequently, the 1st Respondent had decided not to accept the post under JM 1-1 salary code. Accordingly, he had been reverted back to the salary code of MA 5-2, which he was placed until his retirement on 02.12.2015.

However, upon a complaint by the 1st Respondent, the issue had been referred for an arbitration. The reference for arbitration is marked and tendered as P22, which reads as follows:

“ලංකා කාර්-මික සංවර්ධන මණ්ඩලයේ ප්‍රධාන ආරක්ෂක නිලධාරී ලෙස 2001.09.03 දින සිට සේවය කරන එම්.ඩබ්.ඒ.එස්.බී. රඹුක්වැල්ල මහතාට 2014.07.01 දින සිට නව පත්වීමක් ලෙස නැවත ප්‍රධාන ආරක්ෂක නිලධාරී තනතුරම ලබා දීම නිසා උසස්වීම් හා වැටුප් වර්-ධක අනිමිවීමෙන් අගතියක් සිදු වූ බවට ඔහු විසින් කරුණු ලබන ඉල්ලීම යුක්ති සහගත ද යන්න හා එලෙස යුක්ති සහගත වන්නේ නම් ඔහුට හිමි විය යුතු සහනයන් කවරේද යන්න පිළිබඳව වේ.”

Considering the said reference, it is apparent that the terms of reference empower the arbitrator to consider whether the 1st Respondent had suffered as a result of him not being promoted and given salary increments. Upon the said reference, an arbitrator has been appointed and the arbitration process had commenced. At this stage, I am mindful that the instant application before me is not an appeal but a Writ application.

The arbitration proceedings

At the arbitration proceedings, the Petitioner had taken a preliminary objection pursuant to paragraph 16(c) of their answer, whereby the Petitioner had stated that the restructuring process had been done with the approval of the Management Services Department and therefore, they have taken up the position that the Management Services Department should be a party to this arbitration. The arbitrator had reserved an order on the preliminary objections to be made with his final determination. However, it is pertinent to note that this

is an arbitration pertaining to a dispute that had arisen between the Petitioner and the 1st Respondent, and in the reference to arbitration this fact is clearly elaborated.

Keeping the said fact as it may, the arbitration process had commenced, both parties had adduced evidence and the arbitrator had made his award which is marked as P28. This award had been published in the Gazette Extraordinary No. 2188/7 dated 13.08.2020 (P29). The Petitioner and the 1st Respondent had taken part in the arbitration proceedings and had been represented by Counsel. It appears that the 1st Respondent's stance was that he should have been promoted to Executive Grade IV which had been denied to him and further that in the year 2014 he had been re-appointed to the same post that he was already holding, without a promotion.

Subsequent to the 1st Respondent's application to be appointed to a post with the salary code JM1-1, the 1st Respondent has been appointed as Security Officer and placed on JM 1-1 salary code. However, he had been subjected to a further probationary period from the new date of appointment on 24.06. 2014. This is borne out by the letter of appointment marked as P17. By this document the 1st Respondent had been placed on a monthly salary code of Rs. 20,525. However, the 1st Respondent was on a salary of Rs. 23,445. The Petitioner has objected to him being placed on the said salary code on several grounds, namely:

- that he had been denied a promotion,
- that he had worked as Chief Security Officer for a period of 12 years and
- that he had been placed on a non-executive salary code.

The arbitrator had considered the documents that have been tendered to him as reflected in pages 2 to 6 of his order, and he had arrived at the findings which are reflected in page 6 of his order which reads as follows:

- “a. The Respondent has acted unfairly and maliciously towards the Applicant denying him promotion to Executive Grade IV*
- b. The Respondent has acted maliciously towards the Applicant placing him lower position as the Security Officer, subject to a probationary period.”*

Further, the arbitrator had come to the conclusion that the Petitioner in the instant application before us had acted unfairly and maliciously by denying the 1st Respondent's

promotion to Executive Grade IV and by placing him at a lower position of Security Officer from Chief Security Officer and subjecting him to a probationary period. It appears that in coming to the computation of gratuity and the financial loss caused to the 1st Respondent, the arbitrator had considered a document marked and tendered at the arbitration as A22 and A22(1). This Court observes that A22 and A22(1) appears to be a document prepared by the 1st Respondent himself.

Keeping it as it may, let me now consider the Petitioner's grounds upon which he impugns the decision marked as P28. The Petitioner impugns the decision in P28 on the ground that the arbitrator had failed to consider the evidence led before him. As I have stated above, the jurisdiction of this Court has been invoked by the Petitioner by way of a Writ application and not an appeal. However, the Petitioner's first contention is that there was no evidence to demonstrate that the 1st Respondent was placed in a lower position. It is the contention of the Petitioner that the promotions within the Petitioner organization are determined by the salary code and not by the post. However, it is pertinent to note that in the advertisement calling for applications, the post is advertised as "Chief Security Officer" and the letter of appointment confirms the post of "Chief Security Officer".

Further, the Petitioner argues that they had advertised the post of Junior Manager (JM), and when the 1st Respondent made an application to the post of JM 1-1, the 1st Respondent had conceded that it was a promotion and not a demotion. It was the Petitioner's contention that even the salary code of JM 1-1 was higher than that of the salary code the 1st Respondent was placed at, namely, MA 5-2. In support of this contention, the Petitioner drew our attention to page 515 of the brief. It appears that the commencing salary code of MA 5-2 is reflected as Rs. 17,695 while JM 1-1 commences at Rs. 20,490. In response, the learned Counsel for the 1st Respondent submitted that they had tendered the salary slip for April 2011 whereby the 1st Respondent had earned a salary of Rs. 20,620 for the month of April. However, the commencement salary the 1st Respondent would have received under JM 1-1 salary code would be Rs. 20,490. Hence, the 1st Respondent contended that as under JM 1-1 category, he would have had to commence at the first salary step, whereas under his previous salary code MA 5-2, he had been earning a take home salary much higher than what was offered under JM 1-1 at the stage when JM 1-1 was implemented. The reason being in the MA 5-2 salary code, he had passed the initial salary step and his increments had been added. However, the 1st Respondent contended that if he were placed in JM 1-1, he would have had to commence at the threshold level which is lesser than what he had been earning. Hence, it appears that the 1st Respondent had addressed the said issue through the evidence placed before the arbitrator for him to come to the conclusion that his salary under MA 5-2 was higher than the salary he was offered under JM 1-1 salary code.

The Petitioner's main contention was the minimum salaries under MA 5-2 and JM 1-1 are different as JM 1-1 offered a higher commencement salary. Therefore, it was contended that the arbitrator had failed to consider the said evidence and it was also contended that when the arbitrator held that the 1st Respondent was placed on a lower salary code, that finding was erroneous and there was no evidence for the arbitrator to come to the said conclusion. Hence, applying the 'no evidence' rule, the learned Counsel for the Petitioner submitted that the arbitrator's findings cannot be supported by the evidence before him.

In my view, this contention has to fail as there was sufficient evidence placed before the arbitrator at the arbitration to show that the salary he was earning physically was higher than the commencing salary step of JM1-1. The arbitrator had gone one step further and also had considered that the 1st Respondent being not only a Chief Security Officer but had completed his probationary period and had served at the Petitioner organisation for nearly 13 years at the time the JM 1-1 salary code was introduced. In the said background, by placing the 1st Respondent to a salary code of JM 1-1 which contained a cadre vacancy only of a Security Officer, and subjecting him to a further probationary period is tantamount to lowering his position to that of a newly appointed security officer. Hence, in my view, the Petitioner's contention that the arbitrator could not have come to the conclusion that the 1st Respondent was placed in a lower position due to the 'no evidence' rule cannot be maintained.

The Petitioner's second contention was that the arbitrator had erroneously come to the conclusion that the 1st Respondent had been denied his promotion to Executive Grade IV. As per the observations made at the commencement of this judgment, it is common ground that when the 1st Respondent applied and was appointed as the Chief Security Officer (Grade V) he would have been entitled to his promotion to Grade IV after a lapse of seven years, which approximately would have been in the year 2008. The 1st Respondent's allegation was that he had been denied the promotion to Executive Grade IV.

It was the contention of the Petitioner that with the Management Services Circular no. 30 (P8) coming into effect on 22.09.2006, the promotion scheme that was available had been abolished. This was pursuant to a salary conversion where the 1st Respondent himself benefited when he was placed under the salary code of MA 5-2 (P9). It is the contention of the Petitioner that with the Management Services Circular coming into operation, the promotion structure that existed at the time was abolished. Hence, it was his contention that from 2006 onwards with the existing promotion schemes being abolished, the 1st Respondent could not be promoted to Executive Grade IV as there was no Executive Grade

IV in existence at the time his promotion was due. Once again, the Petitioner purely relied on the applicability of the 'no evidence' rule to substantiate the said contention. His contention was that as per P22, the arbitrator should confine his findings to the terms of reference, namely, whether the 1st Respondent was given the same Chief Security Officer's post in 2014, and whether the 1st Respondent suffered a loss pertaining to promotions and increments. The arbitrator in his award has considered the said reference and had observed that the 1st Respondent was entitled for his promotion subsequent to seven years but that promotion had not been granted to him. In his findings, the arbitrator has held that in 2014, the 1st Respondent had been placed on a JM 1-1 salary code and subjected to a probationary period with his position lowered to that of a Security Officer. At this stage, it is pertinent to note that if the 1st Respondent had accepted the new appointment, he would have been placed on the salary code of JM1-1 with the designation of Security Officer as opposed to the post he held, namely, the post of Chief Security Officer as per the restructured cadre. He would also have had to undergo a further probationary period. As contended by the Respondents, this evidence was before the arbitrator and, as I have observed at the commencement of my judgement, it is common ground that the 1st Respondent was entitled to a promotion after seven years of service. Hence, the 1st Respondent's promotion was due subsequent to seven years following his confirmation in the post of Chief Security Officer.

If the restructuring took place when the 1st Respondent was holding the post of Chief Security Officer (Grade V) and his next promotion was to the post of Chief Security Officer (Grade IV), can the 1st Respondent's right for his next promotion be abolished? The Petitioner nowhere before the arbitrator has expressed how the promotions schemes with the new salary structure applied to the 1st Respondent. It was the contention of the Counsel that if the existing promotion scheme was abolished, the 1st Respondent should have been placed in the next Grade in existence under the new salary code. The Petitioner has failed to address this contention. The evidence placed before the arbitrator was that the position held by the 1st Respondent as the Chief Security Officer had been abolished and was placed in a position of a Security Officer subjecting him to a further period of probation. Further, when the post of Chief Security Officer (Grade IV) was abolished, wouldn't that cause a situation where the 1st Respondent would have worked for nearly 13 years without a promotion? It is also apparent that the Petitioner was in the Executive Grade V in his capacity as the Chief Security Officer. However, under the new grading he would have been in the capacity of Junior Management 1-1. Since there was a refusal by him to accept the said post, he was placed on MA 5-2, which is supposed to Management Assistant. Throughout, the 1st Respondent's contention was that he had been placed from an Executive Grade to a Non-Executive Grade and it was his contention that by the new categorisation, his Grade had been lowered. It appears that the arbitrator had taken these facts in to consideration in arriving at his award. Hence, in my view, the arbitrator had

sufficient evidence to come to the conclusion that the 1st Respondent was denied a promotion. It appears the arbitrator had come to this conclusion by considering that the 1st Respondent was placed on a lower salary code, subjected to a fresh probationary period, and placed at a lower designation. In my view, all of this evidence was before the arbitrator. I am also mindful that in an industrial arbitration, an arbitrator is exercising just and equitable jurisdiction as opposed to a strictly legal jurisdiction. In coming to this conclusion, I have considered the judgement of ***Browns & Co. PLC v. Minister of Labour and others*** SC Appeal 108/2008, SC Minutes 17.03.2011, where the Court observed “*arbitration under the Industrial Disputes Act is intended to be even more liberal, informal and flexible than commercial arbitration, primarily because the arbitrator is empowered to make an award which is just and equitable.*” In the said case, the Court further opined “*the jurisdiction of the arbitrator is an equitable one and is not constrained by the provisions of the contract of employment*”. It was also held in ***Asian Hotels & Properties PLC v. Benjamin and others*** SC Appeal 143/2010, SC Minutes 03.09.2012, “*an arbitrator who has been empowered to make such an award do so as may appear to his just and equitable. Section 17 of the Industrial Disputes Act referred to earlier, clearly had granted an unfettered discretion for the arbitrator to mete out just and equitable relief*”.

As demonstrated by the 1st Respondent, and considered by the arbitrator, it is undeniable that the Petitioner’s take home salary under the restructured salary scale would be lesser than the current take home salary under MA 5-2. Hence, the Petitioner’s second ground based on the ‘no evidence’ rule is not tenable.

The Petitioner also contended that the arbitrator had based his award on erroneous calculations when awarding monetary relief to the 1st Respondent. The arbitrator’s award is reflected in page 7 of the document marked as P28. In arriving at the said award in P28, the arbitrator had considered the document A22. The Petitioner contends that the document A22 is erroneous and is a unilateral computation prepared by the 1st Respondent. Examining the document A22, I find that the said document, as I have observed above, is indeed prepared by the 1st Respondent. Hence, I agree with the Petitioner’s contention that A22 is prepared by the 1st Respondent and it appears that the arbitrator had acted on the said document.

The Petitioner impugns the contents of A22 on the basis that it is erroneous and it is based on the salary code of an officer placed in MM 1-2. Hence, the arbitrator’s conclusion on the computation is erroneous. However, the Petitioner did not challenge the document A22 on the basis that he was unaware of the said document. It appears the document A22 is

reflected on page 525 of the brief. If the contents of the said document were incorrect, the Petitioner had the opportunity to cross-examine the 1st Respondent on the basis of computation and also the Petitioner had the opportunity to present the correct computation. After all the Petitioner was the employer. It appears that the Petitioner has failed to do so and the Petitioner has failed to establish through material that he had tendered the correct calculation for the arbitrator to consider. In the absence of such, the only available material before the arbitrator would have been the document marked A22. Nowhere in the submissions of the Petitioner did he contend that he had challenged the accuracy of A22 and the Petitioner has failed to demonstrate to this Court that he had invited the arbitrator to disregard A22, nor was it the position of the petitioner that he had produced the correct emolument package for the consideration of the arbitrator. Hence, in my view, the Petitioner has failed to impugn the document A22 and has failed to tender the correct figures if he challenges the computation in A22. It is also observed that Petitioner has failed to draw our attention to an instance where he had challenged that the 1st Respondent was not entitled to be considered under MM 1-2 salary code. Further, I observe that if the Security Officer's post was not available under the MM1-2, it was incumbent on the Petitioner to bring this to the attention of the arbitrator and also the Petitioner could have challenged the document A22 before the award. There is no material to establish any one of the above observations. Hence, the Petitioner by his conduct of not challenging the document A22 has accepted the contents therein. It was contended on behalf of the Petitioner that the arbitrator had blindly accepted A22 and mechanically adopted the calculations advanced by the 1st Respondent. It is also pertinent to note that the arbitrator, in coming to the said calculation, had acted upon the only evidence that had been made available to him by both parties and that had been accepted without challenge. Hence, the Petitioner's said objection cannot be sustained.

The Petitioner also contended that the award P28 contravenes the principles of natural justice. It is observed that before making his award, the arbitrator had given the opportunity for both parties to present their cases with supportive documents and cross-examine the witnesses and impeach the documents, if necessary. Hence, it cannot be denied that a fair hearing was not afforded.

In the arbitration award, the arbitrator has summarized the salient features that he had considered. It is also pertinent to note that he had considered the evidence under cross-examination, the documents tendered and considered the reasons adduced by the 1st Respondent for not accepting his promotion to JM 1-1 and has considered the period of as Chief Security Officer and after considering the evidence he had come to the conclusion he had arrived at. In my view, the arbitrator's award displays sufficient material and

reasons to demonstrate and justify how he had arrived at the conclusions. Hence, I am unable to agree with the Petitioner's submission that the arbitrator had failed to give reasons for his conclusions.

I have considered the extensive case law cited by the Petitioner and I find that the said judgements are predominantly based on the 'no evidence' rule which is not relevant as the facts and circumstances of this case are different.

Let me now consider the objections raised by the Respondents.

Is the Petitioner guilty of laches?

It is the contention of the 1st Respondent that the Petitioner has filed this application after an undue and unexplained delay. The Respondent's contention is that the arbitral award has been made on 15.04.2020 and was published in the Gazette marked as P29. The Petitioner has repudiated the award by the document marked as P30. The said document is dated 02.10.2020. Hence, the Petitioner had taken steps to repudiate the award six months after the award was made. It appears that on 30.03.2021, the Commissioner of Labour had taken steps to file enforcement action in the Magistrate's Court of Moratuwa and summons have been issued to the Petitioner. The Petitioner thereafter, had been present before the Magistrate on 16.11.2021 and had informed the Court that they have filed an appeal against the arbitration award. However, the Petitioner has filed this instant application only on 12.01.2022 i.e., nearly two years after the arbitration award being published in the Gazette.

The Petitioner, however, explained his delay on the basis that he had made an application to the Attorney General's Department to appear but had not received a reply, and subsequent to receiving a reply, had taken steps to retain a Counsel and file this Writ application. The Counsel for the Petitioner also contended that the delay should not be considered in light of the Covid-19 pandemic. However, it is pertinent to note that on 16.11.2021, a Counsel had represented the Petitioner in the Magistrate's Court and had submitted that they had filed an appeal against the arbitrator's award. The said submissions are filed of record and marked as P33. It is observed that the said submission that an appeal was filed is erroneous as the Petitioner himself conceded at the hearing that there is no right of appeal and no appeal has been filed. In view of the fact that a Counsel had made an application in the Magistrate's Court in 2021 and in view of the fact that the Petitioner had

repudiated the arbitration claim after the expiry of six months, it was incumbent on the Petitioner to demonstrate that it did take steps to file this Writ application without an undue delay. Further, if the Petitioner had not received a reply to his request for legal assistance from the Attorney General's Department, the Petitioner should have pursued the said request with due diligence. It was the contention of the 1st Respondent that the Petitioner had awaited the enforcement proceedings and only thereafter had awoken from his slumber and instituted this Writ application. Hence, the argument of undue delay has to succeed. This court has constantly held that undue and unexplained delay defeats the purpose of obtaining relief in a Writ application. In coming to this conclusion, I have considered the case of ***Buddhi Suranjaya Kaluthanthri v. Urban Council, Panadura and 6 others*** CA CPA 104/2020 decided on 20.07.2022, where the Court held that:

“... delay and laches are the most significant aspects to be considered in Writ Applications. If there is a delay and laches on the part of the Petitioner, which has not been explained to the satisfaction of the Court, the Court will not issue prerogative Writs.”

The prayers of the Petition

Let me now consider the prayers of the Petition. The Petitioner has sought for a Writ of Certiorari to quash the arbitral award marked as P28. However, it is observed that the said award has now been filed before the Magistrate's Court for enforcement. Further, the Court has allocated a case number. Hence, when the matter is before the learned Magistrate in the Magistrate's Court, quashing the document P28 is now futile.

In the case of ***Henry Nelson Rathnayake v. Umesha Matarage and 6 others*** CA Writ 391/21 decided on 30.07.2025, the Court held that:

“A court exercising discretionary jurisdiction has the discretion to refuse relief where the Order sought is likely to be futile. This is so when the Order sought is likely to lack practical effect, have no real consequences or cannot be enforced. Courts may refuse to make such Orders. The rationale, as I see, is judicial economy so to say and doing so may have the propensity of undermining the respect for the legal system and the administration of justice. Thus, when a court is called upon to exercise the discretionary writ jurisdiction, it will deny and refuse such an application which evidently has no practical utility and is futile.”

The Petitioner by prayer (d) has sought a Writ of Certiorari to quash the decision of the 2nd Respondent to institute action under case no. 90847/Labour in the Magistrate's Court of Moratuwa. As per the said prayer itself, it is evident that this prayer becomes futile as action has already been instituted and a case number allocated and is now in the possession of the Magistrate's Court of Moratuwa. Hence, at this stage quashing the decision to institute action is futile. Further, it is observed that the decision of this case now will have a direct bearing on the proceedings before the learned Magistrate. However, this Court observes that the said Magistrate is not a party to this application. Hence, the learned State Counsel and the 1st Respondent has taken up the objection that the Petitioner has failed to name necessary parties to this application, which this Court is in agreement with.

In the case of *Rawaya Publishers v. Wijedasa Rajapakse and others* (2001) 3 SLR 213, the Court held that:

“In the context of writ applications as a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings... If they are not made parties then the petition can be dismissed in limine. It has also been held that persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity.”

Conclusion

I have considered all the material submitted before this Court and the submissions made and for reasons mentioned above, I see no reason to interfere with the arbitrator's award. Hence, I refuse to grant the reliefs prayed for by the Petitioner and proceed to dismiss this application. Costs are to be borne by the parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal