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

In the matter of an Application made under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka for special leave to appeal against the judgment dated 13th of February 2017 of the Honorable Court of Appeal.

1. L. J. K. Hettiaratchi,
   No. 28/3, De Fonseka Place,
   Colombo 05.

2. H. G. Fonseka,
   No. 28/2, De Fonseka Place,
   Colombo 05.

S.C. Appeal No. 37/2018
S.C. (Spl) L.A. No. 53/2017 **Petitioners**
C.A. (Writ) Application No. 280/2012

Vs.

1. Pearl Weerasinghe,
   The Commissioner General of Labour,
   Labour Secretariat,
   Department of Labour,
   Narahenpita,
   Colombo 05.

2. Mr. L. T. G. D. Darshana,
   Assistant Labour Commissioner,
   Labour Secretariat,
   Department of Labour,
   Narahenpita,
   Colombo 05.

3. Mr. M. A. Dhanardane,
   Labour Officer,
   Labour Secretariat,
   Department of Labour,
   Narahenpita,
   Colombo 05.

4. Walker Son & Company Limited,
   No. 18, St. Michael's Road,
   Colombo 03.

Respondents

AND NOW BETWEEN

1. L. J. K. Hettiaratchi,
   No. 28/3, De Fonseka Place,
   Colombo 05.

2. H. G. Fonseka,
   No. 28/2, De Fonseka Place,
   Colombo 05.

Petitioner – Petitioners

Vs.

1. Pearl Weerasinghe,
   The Commissioner General of Labour,
   Labour Secretariat,
   Department of Labour,
   Narahenpita,
   Colombo 05.

1A. Prabath Chandrakeerthi,
Attorney – at – Law,
The Commissioner General of Labour,
Labour Secretariat,
Department of Labour,
Narahenpita,
Colombo 05.

2. Mr. L. T. G. D. Darshana,
Assistant Labour Commissioner,
Labour Secretariat,
Department of Labour,
Narahenpita,
Colombo 05.

2A. Mr. H. K. K. A. Jayasundara,
Assistant Labour Commissioner,
Labour Secretariat,
Department of Labour,
Narahenpita,
Colombo 05.

Substituted Respondent – Respondent

3. Mr. M. A. Dhanardane,
Labour Officer,
Labour Secretariat,
Department of Labour,
Narahenpita,
Colombo 05.

4. Walker Son & Company Limited,
No. 18, St. Michael's Road,
Colombo 03.

Respondent – Respondents

Before: Hon. Murdu N. B. Fernando, P.C., C.J.

Hon. Yasantha Kodagoda, P.C., J.

Hon. Janak De Silva, J.

Counsel: Anoukshi Vidanagamage with Mohamed Adamaly for the Petitioner – Petitioners

Sureka Ahmed, SC for the 1st to 3rd Respondent – Respondents

Written Submissions: 15.05.2018 and 22.08.2023 by Petitioner – Petitioners

04.08.2023 by 1st, 2nd, 3rd Respondent – Respondents

10.06.2020 by 1st and 2nd Respondent – Respondents

27.01.2020 by 4th Respondent – Respondent

Argued on: 30.05.2023

Decided on: 18.07.2025

Janak De Silva, J.

The Petitioner-Petitioners (Petitioners) complained to the Commissioner General of Labour (CGOL) that their statutory dues have not been paid. An inquiry was conducted by U.P.R. Sirinaga, Assistant Commissioner of Labour. Thereafter by letter dated 24.11.2011 a direction was made on the Secretary of the Walkers Covenanted Staff Benefit Association to pay the private provident fund dues of the Petitioners.

Subsequently the 3rd Respondent-Respondent (3rd Respondent) by letter dated 12.07.2012 sent to the 4th Respondent-Respondent (4th Respondent), copied to the Petitioners, informed that an inquiry was to be held relating to the complaint of the Petitioners dated 19.03.2010. The Petitioners attended the said inquiry and sought a clarification on the scope and purpose of the inquiry. The 3rd Respondent intimated that it was been held on the instructions of the 2nd Respondent-Respondent (2nd Respondent) to review his previous decision.

The Petitioners moved the Court of Appeal seeking a writ of Certiorari to quash the decision to review the previous decision. This application was rejected.

The Court of Appeal held that the 2nd Respondent-Respondent (2nd Respondent) had decided to continue the inquiry to ascertain the exact position and verify whether the Petitioners have acted as Directors or as employees of the 4th Respondent and to ascertain the details of their salary during the relevant time. Court further held that the first inquiry centered on Employment Provident Fund (EPF) payments and that the decision on the Gratuity had been made without any proper perusal of documents and facts.

Moreover, the Court of Appeal held that where material evidence has not been furnished at the inquiry, the administrative body has the power to continue with the inquiry until it is satisfied. The Court of Appeal concluded that until the decision is perfected by the filing of the certificate in the Magistrate's Court, any other communication is considered informal and can be varied.

Leave to appeal has been granted on the following questions of law:

(1) Did the learned judges of the Court of Appeal err in law in failing to consider that the law does not permit the CGOL/1st to 3rd Respondents to revisit his final order?

(2) Did the learned judges of the Court of Appeal err in law in failing to consider that upon a final order being delivered by the 1st and/or 2nd and/or 3rd Respondent, the CGOL is *functus* and has no further jurisdiction to vary his/her own order?

(3) Did the learned judges of the Court of Appeal err in law in failing to consider the fact that permitting the CGOL to revisit its order will result in grave uncertainty and the likelihood of abuse and or that it was in any event repugnant with all norms of natural justice, fairness and the Rule of Law?

(4) Did the learned judges of the Court of Appeal err in law in confusing the statutory rights and entitlements of the Petitioners as employees of the 4th Respondent, with the transactions they entered into in their capacity as Shareholders and or Director of the 4th Respondent Company?

(5) Did the learned judges of the Court of Appeal err in law in failing to appreciate that in addition to the admissions of the 1st to the 3rd Respondents, the Petitioners had tendered documents which established without any doubt the fact that they were in fact employees of the 4th Respondent Company?

(6) Have the learned judges of the Court of Appeal misdirected themselves in arriving at a finding that the Petitioners had failed to substantiate the fact that they were in fact employees of the 4th Respondent Company?

The fundamental issue that arises for determination in this appeal is whether the CGOL has the power to revisit an order or decision made by him earlier.

Revisiting Administrative Order

There is something innately concerning in holding that a person has the power to revisit an order or decision he has already made in order to amend, modify or revoke it. This is an issue which has troubled jurists from the Roman times relating to both judicial and administrative decisions.

As Voet [*Voet Commentarius ad Pandectas* at 1.4.21 as translated by Gane The Selective Voet, Being the Commentary on the Pandects Vol 1 (1955) 90] states:

> *"Yet it would be the course of a wise Emperor to use his best efforts here not to bring on himself the disgrace of a shameful fickleness and lack of steadfastness in word and deed by too lightly and rashly revoking and taking away in the evening the favour which he had given in the morning."*

According to Ulpian [Ulpian Digest of Justinian 42.1.55.]:

> *"[Once] a judge has articulated his judgment, he immediately ceases to be the judge … [He] no longer has the capacity to correct the judgment because, for better or for worse, he will have discharged his duty once and for all."*

Most of the arguments against empowering an administrative body to revisit an order or decision it has made are broadly similar to the arguments against holding a Court having such power.

Firstly, a general rule that valid and perfected decisions cannot be altered by an administrative body promotes finality in decision-making. Finality heralds in legal certainty which Wade [Wade, *The Concept of Legal Certainty, A Preliminary Skirmish*; (1941) 4:3 Modern L Rev 183 at 187] identifies as essential to a democratic society founded on the rule of law. Administrative law roots from the Rule of law. Sprouting from such roots, certainty, finality, and lawfulness also become inseparable components of administrative action.

In ***re 56 Denton Road, Twickenham*** **[(1953) Ch. 51 at 56-57]** Vaisey J. held that:

> *"…determination made and communicated in terms which are not expressly preliminary or provisional is final and conclusive, and cannot in the absence of express statutory power of consent of the person or persons affected be altered or withdrawn by that body."*

To do otherwise, Vaisey, J argued, would create unacceptable levels of uncertainty, which runs contrary to the rule of law.

Secondly, depriving an administrative body of such power of revocation, protects the interests of the individuals who have acted in reliance on those decisions and who may suffer detriment if the decisions are rescinded or varied.

Thirdly, the *functus officio* doctrine prevents an administrative body from revisiting its decision. *Functus officio* is a Latin expression meaning "having performed his or her office". As a concept it has existed from Roman times as evinced in the edict of Ulpian which was later transposed to Justinian's Digest. According to Ulpian, a judge ceases to be the judge after he has delivered his judgment *"hoc jure utimur ut judex qui semel vel pluris vel minoris condemnavit, amplius corrigere sententiam suam non posset; semel enim male vel bene officio functus est."*[1]

The doctrine is applicable where a decision is both final and valid. It has been weaved into administrative law in several jurisdictions.

Canadian lower Courts had applied the *functus officio* doctrine to administrative tribunals [See ***Regina v. Development Appeal Board, Ex parte Canadian Industries Ltd*** **(1969), 9 DLR (3d) 727, 1969 CanLII 724 (Alta CA)**]. The decision of the Supreme Court of Canada in ***Grillas v. Minister of Manpower and Immigration*** **[(1972) SCR 577, 23 DLR (3d) 1]** somewhat muddled as to whether the doctrine has application in an administrative context.

[1] Alexandr Koptev, "Digestae Justinian" The Latin Library at Book 42, Title 1, Note 55, online: <www.thelatinlibrary.com/justinian/digest42.shtml>

In ***Chandler v. Alberta Association of Architects*** **[(1989) 2 SCR 848 at 862-63, 62 DLR (4th) 577]** the Supreme Court of Canada brought clarity to the issue. Sopinka J. (at 861) held:

> *"[T]here is a sound policy reason for recognizing the finality of proceedings before administrative tribunals. As a general rule, once such a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within the exceptions enunciated in Paper Machinery Ltd. v. J. O. Ross Engineering Corp., supra."*

The South African courts have also adopted the *functus officio* doctrine to prevent an administrative body from revisiting its decision.

In ***Sachs v. Dönges, NO*** **[(1950) 2 SA 265(AD)]** it was held by reference to this doctrine that a passport once granted cannot be revoked. In ***Welgemoed and Another NNO v The Master and Another*** **[(1976) 1 SA 513 (T)]** it was held that uncertainty should be eliminated, so that the persons concerned can safely act upon the decision, at least until such time as it is set aside on appeal or review. In ***Merafong City Local Municipality v. AngloGold Ashanti Ltd***. **[(2017) 2 SA 211 (CC)]** the Constitutional Court (per Cameron J. at para. 41) held that the validity of a decision has to be tested in appropriate proceedings. The sole power to pronounce that the decision is defective, and therefore invalid, lies with the courts. Government itself has no authority to invalidate or to ignore the decision. It remains legally effective until set aside.

This doctrine has been applied in Sri Lanka as well. In ***Nadaraja Limited v. Krishnadasan*** **(78 NLR 255)** the question arose whether the Minister can revoke an order made by him under Section 4(1) of the Industrial Disputes Act referring an industrial dispute for settlement by arbitration to an Arbitrator appointed by him. It was held that the order of

reference is an administrative act of the Minister and once he has made the order of reference, the Minister becomes *functus* [See ***In Re The Acting General Manager, Electrical Undertakings, Colombo*** **(74 NLR 452);** ***Piyadasa v. Bata Shoe Co.*** **(1982) 1 Sri LR 91;** ***Chandananda De Silva, Commissioner of Elections and Another v. George Ivan Appuhamy and Others*** **(1993) 2 Sri LR 401;** ***Right to Information Commission and Another v. Sri Lanka Telecom PLC*** **(CA Appeal/Application No. CA/RTI/05/2022, C.A.M. 02.11.2023)**].

Fourthly, Akehurst [Akehurst, *Revocation of Administrative Decisions* (1982) PL 613 at 623-624 as referred in Beatson, Matthew, and Elliots, *Administrative Law : Texts and Materials* (3rd Ed., Oxford University Press, 2005) 201], distinguishes two sets of circumstances. He takes the view that where an administrative body is empowered to determine pre-existing legal rights, it is performing the same type of function as a court performs. Just as judicial decisions are final and irrevocable, so too should be those administrative decisions that function similarly. Parliament intends for the administrative body to enjoy some degree of irrevocability of judgements when such authority is entrusted in the particular body. This alignment reinforces the legitimacy and dignity of administrative processes and secures individual rights from arbitrary alteration.

Fifthly, the presumption of validity negates empowering an administrative body the power to revoke, amend or vary its decision.

According to the 'presumption of validity', administrative action is presumed to be valid unless or until it is set aside by a court **[*Hoffmann-La Roche and Co. v. Secretary of State for Trade & Industry* (1975) A.C. 295]**.

Denning L.J. took a different view in ***MacFoy v. United Africa Co. Ltd.*** **[(1961) 3 All E.R. 1169 at 1172]** in holding that *"You cannot put something on nothing and expect it to stay there, it will collapse"*.

This was contrary to the earlier position expounded by Radcliffe L.J. in ***Smith v. East Elloe Rural District Council*** **[(1956) A.C. 736, 769-770]** where he held:

> *"An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

However, Wade and Forsyth (*Administrative Law*, 9th Ed., Indian Edition, 305), states that the statement of Denning L.J. in ***Mcfoy v. United Africa Co. Ltd.*****(supra)** is not the correct position in law.

I had the occasion to examine this issue in greater detail in ***McCallum Brewing Company (Private) Limited v. Commissioner General of Excise and Another*** **[C.A. Writ 469/2008, C.A.M. 18.12.2019]** and ***Weerasooriya v. Wijeweera, Director General of Customs and Others*** **[C.A. (Writ) 259/2014, C.A.M. 22.06.2020]** and adopted the view taken in ***Smith*** **(supra)**. I see no reason to take a different position now [See ***Durayappah v. Fernando*** **(1967) 2 AC 337; *Hoffman-La Roche* (supra. at pages 365-6) per Lord Diplock; *Forbes v. New South Wales Trotting Club* (1979) 25 ALR 1, 30 per Aickin J; *London and Clydeside Estates Ltd v. Aberdeen District Council* (1980) 1 WLR 182, 189-190 per Lord Hailsham; *Calvin v. Carr* (1980) AC 574, 589-90 ; *R v. Panel on Take-Overs and Mergers; Ex Parte Datafin plc* (1987) QB 815, 840 per Lord Donaldson MR; *Wattmaster Alco Pty Ltd v. Button* (1986) 70 ALR 330; *Martin v. Ryan* (1990) 2 NZLR 209, 235-41 (Ryan, J.)**].

Lewis [Clive Lewis, *Judicial Remedies in Public Law*, 5th ed., South Asia Edition (2017)] in discussing the meaning of null and void in administrative law states (at page 185):

> *"The concept of nullity has been used to solve other problem arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires*

act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects. ***Once its illegality is established, and if the courts are prepared to grant a remedy****, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as ever incapable of ever producing legal effects."* (emphasis added)

Thus, even where an act of a public authority is ultra vires and a nullity, for remedial purposes the illegality must be established before a court. As Wade and Forsyth (supra. at 281) states:

"…the court will treat an administrative act or order invalid only if the right remedy is sought by the right person in the right proceedings"

Wade and Forsyth (supra. at page 304) goes on to state as follows:

"This must be equally true even where the 'brand of invalidity' is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the court. **The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects.** Lord Diplock spoke still more clearly [*Hoffmann-La Roche & Co. v. Secretary of State for Trade & Industry* (1975) A.C. 295 at 366], saying that

it leads to confusion to use such terms as 'voidable', 'voidable ab initio', 'void' or 'a nullity' as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction." (emphasis added)

This 'presumption of validity' exists pending a final decision by Court [Lord Hoffmann in ***R v. Wicks*** **(1998) A.C. 92 at 115**, Lords Irvine LC and Steyn in ***Boddington v. British Transport Police*** **(1999) 2 A.C. 143 at 156 and 161, and 173-4**].

Notwithstanding the vigor and rationality of these arguments, there are similar arguments in favour of recognizing the right of an administrative body to revisit an order or decision made by it.

Firstly, it is in the public interest to avoid litigation **[*Comptroller-General of Customs v. Kawasaki Motors Pty Ltd.* (1991) 103 ALR 661, 671 and 667].** The valuable resources of courts bursting at the seam with huge back log of cases need not be wasted where there is an obvious mistake in the decision of an administrative body. [See ***R (on the application of Chaudhuri) v. General Medical Council*** **(2015) EWHC 6621(Admin)**].

Secondly, there is a broad corrective principle which allows public bodies to correct their decisions based on a fundamental mistake of fact **[*Porteous v. West Dorset District Council* (2004) EWCA Civ 244; *Fajemisin v. General Medical Council* (2013) EWHC 3501 (Admin); *R (on the application of Chaudhuri) v. General Medical Council* (supra)].**

In ***R (on the application of Chaudhuri) v. General Medical Council*** **[(2015) EWHC 6621]** it was held that a local authority had power to revisit and rescind an earlier decision based on a fundamental mistake of fact. Here, the Court propounded that, public bodies have an implied power themselves to revisit and revoke any decision vitiated by a fundamental mistake as to the underlying facts upon which the decision in question was based. It adopted the rationale of ***Porteous v. West Dorset District Council*** **(supra)** in arriving at this conclusion. It further, provided that this implied power arose from S.12(1) of the Interpretation Act of the UK.

Thirdly, Akehurst [supra] is of the view that where an administrative body is empowered to confer an individual benefit which he would not otherwise have possessed, there is an implied discretion to revoke such decisions. However, in exercising such discretion, the public body must carefully weigh the competing interests and revoke the decision only where public interests in favour outweigh the private interests of the beneficiary.

In ***Regina v. Metropolitan Police Commissioner, Ex Parte Parker*** **[(1953) 1 WLR 1150]** Lord Goddard, CJ held:

> *"[…] Indeed, leaving out of account such very exceptional things as irrevocable licences granted under seal and possibly licences coupled with an interest, the very fact that a licence is granted to a person would seem to imply that the person granting the licence can also revoke it. The licence is nothing but a permission, and if one gives a man permission to do something, it is natural that the person who gives the permission will be able to withdraw the permission…"*

These competing interests have been examined by Courts from different jurisdictions. As a result it is possible to identify certain specific grounds on which an administrative body may revisit its decision. They are:

(1) Unperfected Decisions

The general rule is that judgments can be changed before perfection. Similarly, administrative decisions not perfected can be revoked or varied.

"Perfecting" simply means, a judgment or an administrative decision being made final. There are varying opinions on when exactly a judgment can be considered "perfected" [See ***L and B (Children)*** **[2013] UKSC 8;** ***Jowett v Bradford (Earl)*** **[1977] ICR 342**; ***Lamont v. Fry's Metals Ltd.*** **(1985) ICR 566**].

The requirements to perfect a decision depends on the relevant legislation. Where the applicable legislation does not prescribe any particular mode for perfecting a decision, the general rule is that the decision is perfected once it is communicated to the party to whom the decision relates [See ***Jowett* (supra); *R v. Greater Manchester Valuation Panel; Ex parte Shell Chemicals (UK) Ltd* (1981) 3 WLR 752; *R v. Criminal Injuries Compensation Board; Ex parte Tong* (1976) 1 WLR 1237(CA)**].

The crucial point is that the decision should have been communicated in a way to indicate that it is not a merely provisional or tentative [See ***Re 56 Denton Road* (supra); *Gunnedah Municipal Council v. White* (1966) 13 LGRA 336; *Holmes v. Ryde Municipal Council* (1969) 90 WN (Pt 1) (NSW) 290**].

However, even where a decision is taken in principle and conveyed, it may be regarded as the final effective decision [***AG v. Bristva Pty Ltd.* (1964-5) NSWR 439; *Wattle Park Pty Ltd v. Commissioner of Highways* (1973) 6 SASR 69; *Foote v. Brown* (1977) 35 LGRA 146 (SC NSW)**].

The characterisation of the decision is irrelevant. An interim decision may be still be regarded for specific purposes to be a perfected and operative decision [See ***The Broken Hill Pty Co v. American Can Co.* (1980) VR 143; *R v. Smith; Ex Pate Mole Engineering Pty Ltd.* (1981) 35 ALR 119 (HC)**].

Australian courts have identified two elements that need to be satisfied to "perfect" a judgment. They suggest that a judgment is "perfected" once the decision maker has i) engaged in the mental process of reaching a conclusion and ii) there has been an objective manifestation of the conclusion [See ***Pintarich v. Deputy Commissioner of Taxation* (2018) 262 FCR 41**; ***Semunigus v. Minister for Immigration and Multicultural Affairs* (2000) 96 FCR 533**].

Accordingly, inadvertently rendered decisions, such as decisions generated by computer programs would not satisfy the mental element. Furthermore, according to these cases, 'objective manifestation' of the decision is satisfied when the decision is either communicated to one of the parties (usually to the applicant), or when the decision is published by delivering the reasons and recording them in the Registry [See ***Semunigus* (supra)**].

Hence the minimum threshold for "perfecting" a decision seems to be the formal communication of the decision to one or more of the parties. A decision which is not so perfected can be revisited.

(2) Express Statutory Power

Express statutory power to revisit decisions is conferred for a variety of purposes. For example, to enable correction of clerical slips and accidental errors in or omissions from written determinations, to enable other errors to be rectified, to permit new evidence not previously available to be considered, to permit decisions which have a continuing effect to be revised in the light of changed circumstances, or simply to allow for reassessment of claims [See Campbell, Enid, *Revocation and Variation of Administrative Decisions*, (1996) 22(1) Monash University Law Review 30].

(3) Implied Statutory Power

Unless there are express provisions to the contrary, or stating a different way a decision should be revisited, decision-makers can exercise an implied power to reconsider decisions. They can exercise such power as an ancillary duty arising out of express statutory terms that affect the decision, and also through constructions of provisions in Interpretation Acts.

Interpretation Acts commonly include a provision of the following type:

> "Where an Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires"

Similar language can be observed in Section 12(1) of the UK Interpretation Act 1978. Section 4 of the Interpretation Ordinance No. 21 of 1901 as amended (Interpretation Ordinance) reads:

> *"Where any enactment or written law, whether passed or made before or after the commencement of this Ordinance, confers a power or imposes a duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires."*

Nevertheless, this does not sanction revisiting any administrative or executive decision with a view to revoke or rescind it. On the contrary, it allows the exercise of power from time to time as required.

In ***Western Refrigeration (Private) Limited v. State Bank of India*** **[S.C. Appeal 11/2016, S.C.M. 01.06.2017]** it was held that the power conferred by section 416 of the Civil Procedure Code is one to which section 4 of the Interpretation Ordinance applies, and may be exercised, from time to time, as the interests of justice require and that the judge is not bound to estimate all likely costs in one attempt.

In ***The South Western Bus Co. Ltd. v. Arumugam*** **(48 NLR 385 at 388, 389)** the Court considered Section 7 of Omnibus Service Licensing Ordinance No. 47 of 1942 in terms of which the Commissioner of Motor Transport has power to issue road service licences from time to time as occasion requires. It was held that the general rule of interpretation is set out in Section 4 of the Interpretation Ordinance which provides that when an Ordinance confers a power or imposes a duty, then, unless a contrary intention appears, the power

may be exercised and the duty shall be performed from time to time as occasion requires and that this section would give the Commissioner the power to issue licences from time to time unless the legislature has expressed a contrary intention in Section 7 (1).

(4) Fundamental Mistake of Fact

There is clear authority that a decision based upon a fundamental mistake of fact can be corrected by an administrative or executive body.

In ***Rootkin v. Kent County Council*** **[(1981) 1 W.L.R. 1186]** it was held that where a local authority issued a season ticket under a mistake of fact, it was duty bound to reconsider the matter when it was found that a mistake about the distance had been made. This was a fundamental mistake of fact as the eligibility for a seasons ticket depended on the distance between the school and the house of the applicant. [See ***R v. Newham LBC, ex parte Begum*** **[1996] 28 HLR, 646 at 656;** ***Crawley BC v. B*** **[2000] EWCA Civ 50;** ***R v. Bradford Crown Court, ex parte Crossling*** **[2000] COD 107*; R v. Inner London North Coroner, ex parte Touche*** **[2001] EWCA Civ 383 at [36];** ***R(Zahid Hafeez) v. Secretary of State for the Home Department*** **[2014] EWHC 1342 (Admin) at [25]-[37]**].

In ***Porteous v. West Dorset District Council*** **[(2004) EWCA Civ 244**] the question was whether the local housing authority was entitled to revisit and change an earlier decision if the earlier decision resulted from a fundamental mistake of fact. Mantell, J. held (at para. 9) as follows:

> *"It would seem surprising if it could not. If an exception may be made for fraud why not for fundamental mistake? After all the resulting harm may be no greater in the one case than the other…Once the true position became known why in commonsense and justice should the local authority be held to a duty to provide accommodation which the applicant does not need and which could be made available in another more deserving case?... Accordingly, whilst I recognise that*

there may well be a distinction to be made between circumstances prevailing at the time of the decision and changes occurring thereafter, I would hold that the judge was right to find that the local authority had been entitled to revisit and rescind its first decision."

This position was subsequently affirmed by Sedley LJ in ***Fajemisin v. The General Dental Council*** **[(2013) EWHC 3501]**.

The circumstances under which an administrative decision may be reviewed on the basis of a fundamental mistake of fact was laid down in ***E v Secretary of State for the Home Department*** **[(2004) EWCA Civ 49]**. However, in view of the order I propose to make in this appeal, there is no need to examine them.

Our courts have recognized the power of an administrative or executive body to revisit its earlier decision. The source of such power is Section 18 of the Interpretation Ordinance which reads as follows:

"Where by enactment whether passed before or after the commencement of this Ordinance, confers power on any authority to issue any proclamation, order or any notification so issued or made may be at any time amended varied rescinded or revoked by the same authority and in the same manner, and subject to the like consent and conditions, if any, or by or in which or subject to which such proclamation, order or notification may be issued or made."

In ***James Perera v. Government Agent Kandy*** **(46 NLR 287)** Court held, by reference to corresponding Section 15 of the Interpretation Ordinance then, that a Government Agent who is authorized to issue notices for a nomination and election of members to Village Committees has power to cancel the notices and issue fresh notices.

In ***Silva v. Attorney General*** **(60 NLR 145 at 151)** Basnayake, C.J. observed as follows:

> *"In the instant case, as stated above the Public Service Commission was free to revoke its delegation by order published in the Government Gazette by virtue of section 15 of the Interpretation Ordinance (present section 18) although the empowering section itself, as in the case of the English Statute referred to in the case of Huth V. Clark (supra), does not confer a power to revoke a delegation once made."*

In ***Hon. Akila Viraj Kariyawasam and Others v. Archbishop of Colombo*** **[S.C. Appeal 54/2017, S.C.M. 22.06.2018, page 8]** Malalgoda, PC, J. held that that the provisions of section 18 of the Interpretation Ordinance applies only when the enabling statute contains the power to issue a proclamation or to make any order or notification without a corresponding power to amend, vary, rescind or revoke them.

Nevertheless, Section 18 of the Interpretation Ordinance does not vest unfettered power to revisit any administrative or executive decision already made. There are no such powers in a modern democratic society. In my view, Section 18 permits any administrative or executive body to revisit its earlier decision only where the decision was made on a fundamental mistake of fact and that also only after giving a fair hearing.

In ***Vasana v. Incorporated Council of Legal Education and Others*** **[(2004) 1 Sri.L.R. 154]** the petitioner sat the Law College Entrance Examination and was informed that her admission has been provisionally approved for registration and was also directed to deposit a sum of money to the credit of the Council of Legal Education. Later the Council had informed her that due to an error, her marks had been entered as 70 when it was in fact 56, and as the cut off mark was 70, she is not qualified for admission. The application of the petitioner for a writ of mandamus directing that she be admitted was rejected. Although the reasoning is that she did not have a legitimate expectation of being

admitted, the decision also supports the ability of an administrative body to revoke its earlier decision based on a fundamental mistake of fact.

In ***Shihar and Others v. Commissioner General of Labour and Others*** **[C.A. (Writ) 152/2018, C.A.M. 16.11.2020, page 11]** and ***Samarasekera v. Wijeyaratne and Others*** **[C.A. (Writ) Application No. 332/2015, C.A.M. 10.03.2021, page 35]** my learned brother Obeyesekere, J. acknowledged the power to revisit an administrative order made under a fundamental mistake of fact.

(5) Fraud

Where an administrative decision has been obtained by fraud, the decision maker has the power to revisit and rescind or modify it. In ***Lazarus Estate Ltd. v. Beasley*** **[(1956) 1 QB 702]**, Lord Denning held as follows:

> *"No Court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;"*

Let me recapitulate the principles expounded above. Generally, a decision made by an administrative or executive body cannot be rescinded or varied by the very same body which made the decision. However, it is possible to do so where there is:

(a) express power, or

(b) implied power, or

(c) where the decision is unperfected; or

(d) the decision was made on a fundamental mistake of fact; or

(e) the decision was obtained by fraud.

In any of the circumstances outlined in (a), (b), (c), (d) or (e) above, the decision maker can revisit the earlier order and revoke or modify it after giving a fair hearing.

Powers of the CGOL

Section 8 of the Payment of Gratuity Act No. 12 of 1983 as amended (Act) empowers the CGOL to issue a certificate to the relevant Magistrate's Court in order to recover any sum due as gratuity. This can be done only after due inquiry.

Learned State Counsel submitted that the inquiry culminates with the filing of a certificate in the Magistrate's Court. I am unable to accede to this proposition. A defaulter who is willing to pay the amount determined by the CGOL after inquiry is then deprived of an opportunity to do so out of Court. I hold that the decision of the CGOL in an inquiry conducted in terms of Section 8 of the Act is perfected upon a written intimation of it being made to the defaulter. The Act does not contain any express power on the CGOL to revisit the perfected decision. Neither is there any implied power.

Hence, the only grounds on which that decision can be revisited is if the decision was made on a fundamental mistake of fact or the decision was obtained by fraud. No allegation of fraud is made by the Respondents. The factual matrix does not reveal that there is any fundamental mistake of fact in making the impugned decision.

On 21.12.2009, the 1st Petitioner wrote to the CEO of MTD Walkers PLC (MTD) with copy to CGOL of the non-payment of his EPF and gratuity. On 19.03.2010, the 2nd Petitioner wrote to the CGOL confirming that he too was not paid the EPF and gratuity by MTD.

The CGOL wrote to MTD on 19.03.2010 informing that an inquiry will be held on 21.04.2010. The inquiry was on both outstanding EPF and gratuity. On that day inquiry commenced and MTD was represented by Head of Administration and an Attorney-at-Law. They were told to report on the documents on payment of wages and period of service.

Sometime later both MTD and 4th Respondent had taken part in the inquiry. On 14.07.2010 all parties tendered written submissions. On 21.07.2010, the inquiry took place with the participation of the Petitioners and 4th Respondent who claimed that it was not liable to pay the EPF and gratuity as it was the obligation of the earlier Directors.

During the inquiry, the 4th Respondent never disputed that the EPF and gratuity is due to the Petitioners. The only point made was that it is the Petitioners themselves, as Directors of the 4th Respondent during the relevant period, who are liable to make the payment. Ostensibly, this contention appears to be founded upon Section 40 of the Employees' Provident Fund Act No. 15 of 1958 as amended. It may well provide a defense to the present Directors of the 4th Respondent during any proceedings in the Magistrate's Court. However, it does not prevent the CGOL from arriving at a finding that the 4th Respondent has failed to pay the Petitioners their EPF and gratuity.

For the foregoing reasons, I hold that there is no fundamental mistake of fact in the impugned decision. Hence, the CGOL has no power to revisit it with a view to varying or revoking it.

I answer the questions of law as follows:

(1) Did the learned judges of the Court of Appeal err in law in failing to consider that the law does not permit the CGOL/1st to 3rd Respondents to revisit his final order?

The CGOL may revisit a decision made by him where the decision was made on a fundamental mistake of fact or the decision was obtained by fraud. In the present case, the decision was not based on a fundamental mistake of fact. Neither was it obtained by fraud.

(2) Did the learned judges of the Court of Appeal err in law in failing to consider that upon a final order being delivered by the 1st and/or 2nd and/or 3rd Respondent, the CGOL is *functus* and has no further jurisdiction to vary his/her own order?

The CGOL may revisit a decision made by him where the decision was made on a fundamental mistake of fact or the decision was obtained by fraud.

In view of the answers given to the above questions of law, there is no need to answer the other questions of law.

I set aside the judgment of the Court of Appeal dated 13.02.2017.

For the reasons more fully expounded above, I issue a:

(a) Writ of Certiorari quashing the decision reflected in P10 to commence an inquiry again into the impugned matters;

(b) Writ of Prohibition prohibiting and/or restraining the Commissioner General of Labour and/or 1st and/or 2nd and/or 3rd Respondents from conducting any further inquiry in respect of matters already determined in the letter dated 8th March 2012 marked P7 and/or in respect of matters arising from the Petitioners complaint marked P2 and P2(a) and/or from varying and/or revising and/or cancelling the said order and/or determination contained in letter dated 8th March 2012 marked "P7";

(c) Writ of Mandamus to compel the 1st and/or 2nd and/or 3rd Respondents to take immediate steps to promptly institute appropriate action to recover on behalf of the Petitioners the sums awarded by the determination contained in letter dated 8th March 2012 marked "P12".

Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Murdu N. B. Fernando, P.C., C.J.

I agree.

CHIEF JUSTICE

Yasantha Kodagoda, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT