

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

In the matter of an Application for Special Leave to Appeal made in terms of Article 154P of the of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions of Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 (as amended) and Industrial Disputes Act No. 43 of 1950 as amended by Act No. 32 of 1970.

Bank of Ceylon,
No. 4, Bank of Ceylon Mawatha,
Colombo 1.

Respondent-Appellant-Appellant

S.C. H.C.(C.A.) L.A. No: 183/2008
Civil High Court of Appeal
No: NCP/HCCA/LTA/10/2008

Vs.

H.S. Somaratne,
No. 740/1,
Millawa,
Kurunegala.

Applicant-Respondent-Respondent

Before : **R.A.N. Gamini Amaratunga, J.**
K. Sripavan, J.
Chandra Ekanayake, J.

Counsel : Sanjaya Rajaratnam, D.S.G. for Respondent-Appellant-Appellant.

Nimal Hapuarachchi for the Applicant-Respondent-Respondent.

Argued on : 11.03.2009

Written Submissions

filed on : 28.04.2009

Decided on : 09.2009

SRIPAVAN, J.,

The Applicant-Respondent-Respondent (hereinafter referred to as the workman) joined the services of the Respondent-Appellant-Appellant Bank (hereinafter referred to as the employer) on 16th May 1997 as a junior clerk cum assistant cashier. The services of the workman were terminated by the employer with effect from 19th December 1997 following a disciplinary inquiry held against him. The workman instituted an application in the Labour Tribunal, Anuradhapura seeking relief for the termination of his services by the employer.

The employer filed answer stating that the workman was sent on compulsory leave and was interdicted by letter dated 19th December 1997 for acts of misconduct committed by him when he was serving in the Anuradhapura Bazaar Branch of the Bank; a Charge Sheet dated 21st January 1998 was served on the workman and after an inquiry he was found guilty of all the charges; consequently, his services were terminated by letter dated 9th December 1998 with effect from 19th December 1997.

The learned President of the Labour Tribunal, Anuradhapura after the conclusion of the inquiry made Order on 30th June 2006 directing the employer to pay a sum of Rs. 304,200/- as compensation to the workman computed on the basis of one and a half months salary for each year of service. The employer appealed to the Provincial High Court of the North Central Province holden in Anuradhapura.

The appeal was subsequently transferred to the Civil High Court of Appeal upon a direction dated 2nd June 2008 issued by the Secretary to the Judicial Services Commission.

Both the employer and the workman filed written submissions in the Provincial High Court. The workman in his written submissions took up a preliminary objection which the employer claimed that he had been deprived of an opportunity to counter the said preliminary objection. The preliminary objection taken on behalf of the workman was that the petition of appeal filed in the High Court did not bear a Certificate by an Attorney-at-Law to the effect that the matter of law to be argued was a fit question for adjudication by Court. The learned High Court Judge delivered his Order on 13th November 2008 upholding the preliminary objection raised on behalf of the workman and dismissed the appeal of the employer. The learned High Court Judge relying on the judgment of *Thavarayan and two Others vs. Balakrishnan* (1984) 1 S.L.R. 189, stated, inter alia :-

- (a) that Section 31(D)(9) of the Industrial Disputes Act mandates that the hearing and disposal of an appeal shall be in compliance with Chapter XXVIII of the Code of Criminal Procedure Act;
- (b) that the petition of appeal should comply with Section 322(2) of the Code of Criminal Procedure Act No. 15 of 1979;
- (c) that accordingly, the petition of appeal must contain a Certificate by an Attorney-at-Law that such question of law is a fit question for adjudication by Court; and
- (d) that no such Certificate has been annexed to the petition of appeal.

The employer sought leave to appeal to the Supreme Court against the Order made by the Civil High Court of Appeal. This Court granted leave to appeal on the following questions of law :-

- (a) Did the learned High Court Judge of the Civil High Court of Appeal err in law when he came to the finding that it was mandatory to comply with Section 322 (2) of the Code of Criminal Procedure Act No. 15 of 1979, in an appeal made from an Order of the Labour Tribunal under Section 31(D)(9) of the Industrial Disputes Act No. 43 of 1950 as amended?
- (b) Did the learned High Court Judge of the Civil High Court of Appeal err in law when he came to the finding that it was mandatory that the petition of appeal must contain a Certificate by an Attorney-at-Law to the effect that the matters referred to in the petition are questions of law fit and proper for adjudication by Court?
- (c) Did the learned High Court Judge of the Civil High Court of Appeal err in law when he came to the finding that the petition of appeal filed by the Appellant (Employer) did not conform to the requirements of Section 31(D)(9) of the Industrial Disputes Act read with Section 322(3) of the Code of Criminal Procedure Act No. 15 of 1979?
- (d) Did the learned High Court Judge err in law in failing to consider that there was substantial compliance with Section 322(2) of Act No. 15 of 1979 although there was no literal compliance with that Section?

Thavarayan and two Others v. Balakrishnan (1984) 1 S.L.R. 189 is a case based on Section 31D of the Industrial Disputes Act which relates to an identical matter that is under consideration in the present appeal. H.A.G. de Silva, J. with whom Abeywardena, J. agreed, followed the decision in *Thomas vs. Ceylon Wharfage Co. Ltd.* 49 N.L.R. 397 which was decided by a single Judge under the Workman's Compensation Ordinance and held that in terms of Section 322(2) of the Code of Criminal Procedure Act No. 15 of 1979 read with Sections 31D (2) and (5) of the Industrial Disputes Act, a question of law in an appeal from an Order of the

Labour Tribunal must be certified by an Attorney-at-Law as a question of law fit for adjudication by the Court of Appeal.

It is regretted to note that in *Thavarayan's* case, it was not brought to the attention of Court that *Thomas' case* which it followed had been over-ruled by a later decision in *Saranelis vs. Civilian Labour Administrative Officer*, 56 N.L.R. 366, by a Bench of Two Judges consisting of Pulle, J. & Weerasuriya, J. The Court may have come to a different conclusion had the decision in *Saranelis' case* been brought to the notice of the Court that decided *Thavarayan's case*.

It is observed that Section 31 D of the Industrial Disputes Act has been repealed by the amending Act No. 32 of 1990 as amended by Act No. 11 of 2003. The relevant Section, namely, Section 31D(6) reads as follows :-

“Every petition of appeal to a High Court established under Article 154P shall bear uncanceled stamps to the value of five rupees and in every case where the applicant is required to furnish security, be accompanied by a certificate issued under the hand of the President of the Labour Tribunal to the effect that the appellant has furnished such security, in the High Court within a period of thirty days (including the day on which the order appealed from was made but excluding Sundays and Public Holidays) reckoned from the date of the order from which the appeal is preferred.”

This Section undoubtedly refers to the following relevant material that a petition of appeal should contain :

- (a) An uncanceled stamps to the value of five rupees ; and
- (b) Where the appellant is required to furnish cash security, a Certificate issued under the hand of the President, Labour Tribunal in proof of such payment.

The manner of drawing up of a petition of appeal or the form of appeal is not stated in Section 31D(6). In fact, the Act is silent regarding the form of petition. In the case of *Liyanage vs. Weeraman*, S.C. 235/72 – L.T. Case No. G/6967 – S.C. Minute of 31st January 1974, the then Supreme Court deciding a similar issue under the Industrial Disputes Act held (Rajaratnam, J. with Tittawella, J. agreeing) that a Certificate in compliance with Section 340 (2) of the Criminal Procedure Code [now Section 322(2) of Act No. 15 of 1979] need not be attached to the petition of appeal. The Court took the view that Section 31D(5) [now Section 31D(9)] refers to matters connected with the “hearing and disposal” of an appeal but is silent regarding the form of the petition of appeal.

The *Liyanage’s case* followed the decision made by Sansoni, C.J., in *Walker Sons & Co, Ltd. Vs. Fry*, 68 N.L.R 73 at 89. His Lordship the Chief Justice made the following observations:

“Nowhere does Section 31D require that the petition of appeal should state the question of law. Nor does the manner of drawing up a petition of appeal come within the expression “hearing and disposal of an appeal”.

The observation made by His Lordship Sansoni, C.J., apply with equal force to the present appeal as Section 31D(9) of Act No. 32 of 1990 has recourse only to “hearing and disposal of an appeal” and not to the format of a petition of appeal. The primary rule of construction is to intend the legislature to have meant what they have actually expressed. The object of all interpretations is to discover the intention of the legislature and if the words properly construed admit only one meaning, the Court is entitled to give that meaning and not to travel outside on a voyage of discovery. The use of the words “hearing and disposal of an appeal” by necessary

implications shuts out the style or the manner in which a petition of appeal be drawn up.

It must therefore follow that the petition of appeal filed by the employer need not contain a certificate by an Attorney-at-Law to the effect that the matters referred to in the said petition are fit for adjudication by Court. For the reasons set out, I answer the questions of law referred to in paragraphs (a), (b) and (c) in the affirmative. In view of the conclusion reached, the necessity to answer the question of law in paragraph (d) does not arise.

The Order of the Civil High Court of Appeal holden in Anuradhapura dated 13.11.2008 is therefore set aside and the said Court is directed to hear and determine the appeal No. NCP/HCCA/LTA/10/2008 on its merit and to make an appropriate order as expeditiously as possible.

Judge of the Supreme Court

R.A.N. Gamini Amaratunga, J.

I agree.

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree.

Judge of the Supreme Court