

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

SC/APPEAL 194/2016.

SC/HCLA/5/2016
HCT/APP/52/2015
LT Trincomalee No. LT/TC/121/12.

In the matter of an Application for Leave to Appeal from the judgment of the High Court of the Eastern Province, Holden Trincomalee under and in terms of Section 31DD of the Industrial Disputes Act as amended.

K. Mahendran,
Ward No.05, Gandhi Nagar,
Kumburupiti, Trincomalee.

APPLICANT

-VS-

Deutche Welle Radio and TV
International, Colombo Office,
No.92/1 D,
D.S. Senanayake Mawatha,
Colombo 08.

RESPONDENT

AND THEN BETWEEN,

Deutche Welle Radio and TV
International, Colombo Office,
No.92/1 D,

D.S. Senanayake Mawatha,
Colombo 08.

RESPONDENT-APPELLANT

-VS-

K. Mahendran,
Ward No.05, Gandhi Nagar,
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**APPLICANT-RESPONDENT-
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**RESPONDENT-APPELLANT-
RESPONDENT**

BEFORE : **SISIRA J. de ABREW, J.**
L.T.B. DEHIDENIYA, J.
S. THURAIRAJA, PC, J.

COUNSEL : Niranjan Arulpragasam for the Applicant-Respondent-Appellant.
Thilak Wijesinghe with Ms. G. M. Goonesinghe for the
Respondent-Appellant-Respondent

ARGUED ON : 19th July 2019.

WRITTEN SUBMISSIONS : Applicant-Respondent-Appellant on 1st February
2019.
Respondent- Appellant- Respondent on 24th
October 2011.

DECIDED ON : 7th August 2019.

S. THURAIRAJA, PC, J.

This is an Appeal filed by K. Mahendran i.e. the Applicant-Respondent-Appellant (hereinafter referred to as the 'Employee-Appellant') against the Respondent-Appellant-Respondent i.e. Deutsche Welle Radio and TV (hereinafter referred to as the 'Employer-Respondent').

The Employee-Appellant was employed as a Transmitter Mechanic in 1985 by the Employer-Respondent. Upon reaching fifty five years of age, the Employee-Appellant retired from service on 2nd November 2011. The Employee-Appellant was re-employed on the basis of two consecutive fixed term employment contracts, each for six months, with the period of the first contract being from 01.11.2010 to 30.04.2011 and the second contract being from 01.05.2011 to 31.10.2011. During the period of the second contract, the Employee-Appellant was informed by the Employer-Respondent that, he is to be suspended from 31st August 2011 till the 31st of October

2011 due to his conduct inside the workplace. He was further informed that his salary will be paid and that his services will not be required after October 2011.

On 23.04.2012, the Employee-Appellant filed an Application bearing No. LT/TC/121/12 in the Labour Tribunal of Trincomalee on the grounds of unjust and wrongful termination of his service. Further, he pleaded that he be re-instated in service and be paid with his gratuity and additional bonus.

The learned President of Labour Tribunal, after hearing the parties ruled in favor of the Employee-Appellant by order dated 18.12.2013. The President of the Labour Tribunal came to a conclusion that his termination was unfair and that, he be paid compensation equivalent to forty four months' salary, which was totaled to Rs. 1,452,000/-

Being aggrieved with the said order, the Employer-Respondent filed an Appeal to the Provincial High Court of the Eastern Province by Petition of Appeal dated 22.01.2014. The learned Judge of the High Court, after giving reasons, by order dated 10.12.2015 allowed the Appeal and set aside the order of the President of the Labour Tribunal.

Being unsatisfied with the said order, the Employee-Appellant preferred the present Appeal to this Court. When the matter was supported for notice on 24.10.2016, leave was granted on the following questions marked (a) and (e) in paragraph 8 of the Petition dated 21.01.2016-

"a) Did the Learned Judge of the High Court of the Eastern Province err in law in coming to the finding that the Petitioner's application to the Labour Tribunal was out of time?

e) Was the judgment of the High Court of the Eastern Province 'just and equitable'?"

It will be appropriate to consider certain factual matters before we proceed to answer the questions in this Appeal. The Employee-Appellant was employed on 16.05.1985

and had retired on 02.11.2010 as per the retirement policy of the Company. Thereafter, he had claimed his Employee Provident Fund (EPF), Employee Trust Fund (ETF) and Gratuity on 10.01.2002. All those claims have been duly paid.

After the retirement, he had filed an application for the post of Transmitter Mechanic (marked as 'R2' on Page 202) and the Employer-Respondent employed the Employee-Appellant on a contract basis and the salary was decided as Rs. 837 per day and can be increased up to Rs. 921 from 10.12.2010. (marked as 'R3' on Page 203).

On perusing the file, we find that the first employment is evidently distinct from the second and third employments. Further, it is observed that the employment relationship which began in 1985 between the employer and the employee, had come to an end on 02.11.2010 when the employee reached the age of fifty five years. On retirement, all the benefits were settled. Therefore, the contracts that resulted in the second and third employment with the same parties is not a continuation of the initial employment but, is rather, a new relationship on a contract basis. When the second term of contract was in force, it appears that the employee was involved in an act of misconduct with another employee, which had gone up to the Police Station and the matter was pending before the authorities at the relevant time.

The period of 2nd Contract was from 1/5/2011 to 31/10/2011. The Employer-Respondent had suspended and terminated the second contract with effect from 31.10.2011. For the purpose of completeness, the Employer-Respondent and Sri Lanka Broadcasting Corporation had a contract. Since the time period of the said contract was complete, the Employer-Respondent decided to close down the workplace. After having obtaining approval from the Commissioner of Labour, the Employer-Respondent provided compensation to its employees. The people who were on service on the relevant date i.e. on 31.12.2011 were paid compensation on the basis of amounts approved by the Commissioner of Labour.

The Counsel for the Employee-Appellant submits that there has been a discrimination since the co-employees were paid compensation while the Employee-Appellant was not paid any such compensation. He submits the following authorities to support his claim that the order of the President of the Labour Tribunal is acceptable- ***United Engineering Worker Union v. K. W. Devanayagam, 69 N.L.R. 289*** and ***Y. G. De Silva v. Associated Newspapers of Ceylon Ltd., 1978-79/2/SLR/12***. Further, he submits that the Employee-Appellant was unfairly treated.

The Counsel for the Employer-Respondent submits to the Court that the Employee-Appellant was not in service on the due date and that therefore, he is not entitled to any compensation. Further, he submits that the Employee-Appellant was inconsistent in his Application to Courts. Elaborating on the same, he states that the Employee-Appellant submitted an Application to the President of the Labour Tribunal and when it was taken up for hearing, he had changed the texture and nature of the Application. He also submits that the Application was time barred.

On carefully perusing all the documents and proceedings available in our brief, I find that, the Employee-Appellant, in his original Application dated 23.04.2012 had sought re-employment, gratuity and additional bonus but when the matter was taken up for inquiry, he submitted that others were paid compensation and other benefits and that therefore, he should be paid compensation as well.

I find that, the termination of the employment services of the other employees was with effect from 31.12.2011 as per contract while the Employee-Appellant's services were terminated with effect from 31.10.2011. Therefore, it is clear that he was not employed on the date of closure of the Company i.e. on 31.12.2011. Hence, he is not entitled to be paid compensation. Moreover, I observe that, the Employee Provident Fund, the Employee Trust Fund and Gratuity claimed by the Employee-Appellant has been duly paid.

In the case of ***Caledonian Estates Ltd. v. Hillman, S.C. 250/72—L.T. 1/27665***, it was observed that-

“The question that the Tribunal has to address itself is ... whether the employee has, in the circumstances of the termination, a claim, in justice and equity, to compensation or other benefit for the loss of career resulting from the termination. If the employee’s conduct had induced the termination, he cannot, in justice and equity, have a just claim to compensation for loss of career, as he has only to blame himself for the predicament in which he finds himself.”

Moreover, in the case of **Ceylon Transport Board v. Wijeratne, (77 N.L.R. 481)** at **page 489**, it was observed that-

‘It has been repeatedly held that no compensation can be ordered where the dismissal is justified.’

In the case of **Superintendent, Dalma Group v. Ceylon Estate Staff’s Union, 73 N.L.R. 574**, it was held-

“Compensation is payable only when a wrong has been done”

In the present case, it is evident that the employee’s misconduct had induced the suspension of the second contract and therefore, he is not entitled to obtain compensation in this regard.

Considering the order of the learned President of the Labour Tribunal, I am of the view that, the President of the Labour Tribunal had failed in assessing the approval by the Commissioner of Labour and the mode of termination of employment of the then employees of the Company. At the time of filing the Application dated 23.04.2012 before the President of the Labour Tribunal, the Employee-Appellant was fully aware of the closure of the Company. Even in that background, the Employee-Appellant had sought re-employment and other benefits but not compensation.

Further, with regard to the date of termination and the date of filing the Application, the learned High Court Judge had found that the Employee-Appellant was time

barred. On having carefully perused the record, I find that, the learned High Court Judge is justified in his decision.

Considering the questions in paragraph 8 of the Petition dated 21.01.2016, for which leave was granted, I answer the question marked (a) in the negative and consequently, I answer the question marked (e) in the affirmative.

For the reasons already enumerated by me, I am of the view that, there is no merit in the Appeal. Accordingly, I dismiss the Appeal and award no cost.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

SISIRA J. de ABREW, J.

I agree.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT