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

In the Matter of an application for Special Leave to Appeal against the judgement of the High Court of the Western Province in Case No. WP/HCA//103/2013/LT, Under and in terms of Article 128 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka and the Section 31DD of the Industrial Disputes (Amendment) Act, No. 32 of 1990 as amended.

SC Appeal 115/2017
SC SPL LA No. 219/2015
WP/HCA/103/2013/LT
Case No. LT 21/2545/2009

RSK LANKA PRIVATE LIMITED
Phase 11,
Export Processing Zone
Katunayake.

Employer-Respondent-Appellant

Vs.

P.M. NADIKA R. PATHIRAJA
SiriNiwasa
Wadumunnegedara.

Applicant-Appellant-Respondent

Before	:	Jayantha Jayasuriya, PC, CJ Buwaneka Aluwihare, PC, J. S. Thurairaja, PC, J.
Counsel	:	Kushan D' Alwis PC with Ayendra Wickremasekara and Sashendra Mudannayake for the Employer-Respondent-Appellant. Anura Gunaratne for the Applicant-Appellant-Respondent.
Written Submissions filed on	:	24.07.2017 and 17.03.2023 by the Employer-Respondent-Appellant. 12.05.2020 and 29.03.2023 by the Applicant-Appellant-Respondent.

Argued on : 09.12.2022

Decided on : 31.05.2023

Jayantha Jayasuriya, PC, CJ.

The applicant-appellant-respondent (hereinafter referred to as the respondent) filed an application in the labour tribunal alleging that the employer-respondent-appellant (hereinafter referred to as the appellant) constructively terminated her services. The respondent sought *inter alia* re-employment with back wages or reasonable compensation if re-employment is not granted. The appellant pleaded that no relief should be granted to the respondent as no termination of services had taken place. Therefore, it was further pleaded that the respondent is not entitled to any of the reliefs prayed for and moved that the application be dismissed.

The labour tribunal after an inquiry, by its order dated 15 January 2013 dismissed the application on the basis that the tribunal lacks jurisdiction as the respondent failed to establish termination of services. The president of the labour tribunal held that proof of termination, either actual or constructive is necessary for an application under section 31B (1)(a) of the Industrial Disputes Act (hereinafter referred to as the Act), to succeed. Being dissatisfied with the aforesaid order, the respondent invoked the appellate jurisdiction of the Provincial High Court under section 31D of the Act and the High Court pronounced its Order on 14 September 2015. The learned High Court judge in his order *interalia* held that the respondent should be accorded with an opportunity to report for work with half wages for the period of absence.

The appellant is impugning the aforesaid order of the High Court.

This Court granted special leave to appeal on the following two questions:

(a) Has the learned High Court judge erred and / or misdirected himself in law by proceeding to hold that the respondent be reinstated in the employment of the petitioner with half wages, after having correctly concluded that the employment of the respondent has not been terminated, and that the said Application of the respondent could not have been maintained due to a patent lack of jurisdiction?

(b) After having correctly arrived at the conclusion that there is no reason to interfere with the decision of the learned president of the labour tribunal, has the learned High Court judge erred and / or misdirected himself in law by proceeding to award the

respondent the relief of reinstatement with half wages, without dismissing and / or disallowing the aforesaid appeal filed by the respondent?

The learned High Court judge in his impugned judgment had initially reached the conclusion that the appellant has not terminated the services of the respondent and therefore the labour tribunal lacks patent jurisdiction. Accordingly, the learned High Court judge had further decided that there is no reason to interfere with the order of the labour tribunal.

Both the president of the labour tribunal as well as the learned High Court had examined in detail, all the evidence pertaining to the issue whether the initial suspension of work followed by interdiction of the respondent pending the disciplinary inquiry amounts to a 'constructive termination' in the given situation. Sequence of events commencing from 11 October 2008 up to the date on which the respondent made her application to the labour tribunal namely 29 January 2009 had been considered in the context of the evidence of the witnesses and correspondence between the appellant and the respondent. Such evidence reveal that the refusal of the respondent to comply with certain directions of the management had taken place on 11 October 2008 and the respondent has been placed on interdiction on 29 October 2008, initially being temporally suspended on 15 October 2008. There had been a series of correspondence between the two parties and the respondent made the application to the labour tribunal on 29 January 2009, while the disciplinary inquiry was scheduled for 10 February 2009. The respondent in her evidence at the labour tribunal in the cross-examination had admitted that failure to attend the disciplinary inquiry was a grave error on her part.

However, the learned High Court judge having concurred with the decision of the labour tribunal that no constructive termination had taken place and therefore there is no reason to interfere with the decision of the labour tribunal had thereafter proceeded to hold that the respondent should be accorded with an opportunity to report for work with half wages for the period of absence. In arriving at this decision the learned Judge had observed that the respondent would lose an opportunity to obtain any relief, as she is not reporting for work. The learned Judge had observed that such pronouncement is warranted when all surrounding facts and circumstances are examined in a just and equitable manner.

The learned President's Counsel for the appellant contended that there is no legal basis for the High Court to have made this order after holding that the labour tribunal lacks patent jurisdiction.

However, the learned counsel for the respondent contended that the impugned order of the High Court is within the purview of sections 31B(4) and 31C(1) of the Act.

Section 31B(4) reads:

"Any relief or redress may be granted by a labour tribunal to a workman upon an application made under subsection (1) notwithstanding anything to the contrary in any contract of service between him and his employer"

Section 31C reads:

"Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary, and thereafter make such order as may appear to the tribunal to be just and equitable".

Examination of both these sections clearly reflect that the exercise of powers vested on the labour tribunal by those provisions are restricted to situations where its jurisdiction is invoked by an application made under section 31B of the Act. The three matters for which relief or redress from a labour tribunal can be sought on an application made to a labour tribunal are stipulated in section 31B(1). The instance which is relevant to this appeal namely that termination of services of a workman by the employer is set out in Section 31B(1)(a). Therefore, proof of 'termination of services by the employer' is a necessary pre-requisite for a labour tribunal to grant any relief or redress to a workman who has made an application made under section 31B(1)(a).

In the instant matter, the learned president of the labour tribunal after careful analysis of the evidence placed at the inquiry had arrived at a finding of fact that the respondent failed to establish termination of her services. The learned High Court judge had neither found fault with this finding nor has set aside it. To the contrary he concurred with the finding of the learned president of the labour tribunal. Thus, both the president of the labour tribunal and the learned High Court judge found that the services of the respondent were not terminated. Under these circumstances, the respondent is not entitled to invoke the jurisdiction of the labour tribunal, in terms of section 31B(1)(a) of the Industrial Disputes Act.

Therefore, the learned president of the labour tribunal had correctly proceeded to dismiss the application of the respondent after holding that the respondent failed to establish termination of employment. However, the learned judge of the High Court had erred when he proceeded to hold

that the respondent should be accorded with an opportunity to report for work with half wages for the period of absence, while holding that the respondent had no right to maintain the application and therefore there is no reason to interfere with the order of the learned president of the labour tribunal.

The Supreme Court in ***Arnolda v Gopalan*** 64 NLR 153, in reference to jurisdiction of labour tribunals under the Act, had observed that the "powers as well as its jurisdiction has to be looked for within the four corners of this statute…." (at 156-157). When a labour tribunal granting any relief or redress to a workman under section 31C of the Act, the just and equitable order must be fair to all parties (***People's Bank v Gilbert Weerasinghe*** [2008] BLR 133 at 135) and that the labour tribunal does not have 'the freedom of the wild ass' in exercising powers vested on it under section 31C of the Act (***Walker sons & Co Ltd v Fry***, 68 NLR 73 at 99). Furthermore court had agreed with the view that *"justice and equity can be measured not according to the urgings of a kind heart but only within the framework of the law"* (***Richard Peiris & Co Ltd v Wijesiriwardane***, 62 NLR 233 at 235).

Hence, I am of the view that the relief granted in the order of the learned High Court Judge while exercising appellate jurisdiction, exceeded the original jurisdiction of the Labour Tribunal.

In view of my findings above I proceed to answer both questions of law on which Special Leave to Appeal was granted in the affirmative and allow the appeal. The Order of the Labour Tribunal is affirmed and the Judgment of the High Court is accordingly set aside.

Chief Justice

Buwaneka Aluwihare, PC, J.
I agree.

Judge of the Supreme Court

S. Thurairaja, PC, J.
I agree.

Judge of the Supreme Court