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

S.C Appeal No.136/2009
S.C. (Spl) L.A. No.172/2009
High Court Colombo
Case No.HCALT/26/07
L.T. Colombo
Case No.2/701/04

Colombo Municipal Council Employees'
Co-operative Thrift and Savings Society
Limited,
Town Hall,
Colombo 07.

Respondent-Appellant-Appellant

Vs.

Hemalatha Hettiarachchi,
88, "Sevana",
Rajamahavihara Road,
Pitakotte.

Applicant-Respondent-Respondent

BEFORE : Dr. Shirani A. Bandaranayake, CJ.
K. Sripavan, J. &
Chandra Ekanayake, J.

COUNSEL	:	Sumedha Mahawanniarachchi for the Respondent-Appellant-Appellant P.K. Prince Perera for the Applicant-Respondent-Respondent
ARGUED ON	:	01.11.2010
WRITTNE SUBMISSIONS TENDERED ON	:	Respondent-Appellant-Appellant : 10.01.2011 Applicant-Respondent-Respondent : 30.11.2010
DECIDED ON	:	25.06.2012

Dr. Shirani A. Bandaranayake, CJ

This is an appeal from the Judgment of the Provincial High Court of the Western Province, holden in Colombo, (hereinafter referred to as the High Court) dated 22-06-2009. By that judgment the High Court had affirmed the Order of the Labour Tribunal dated 21-02-2007. The respondent-appellant-appellant (hereinafter referred to as the appellant) came before this Court against the Order of the High Court on which this Court had granted Special Leave to Appeal.

The facts of this appeal, as submitted by the learned Counsel for the appellant, *albeit* brief, are as follows:

The appellant being a Co-operative Society, incorporated under the Co-operative Societies Law, No. 5 of 1972, had recruited the applicant-respondent-respondent (hereinafter referred to as the respondent) as a clerk on 02-10-1972. She had been promoted to different Grades at various stages and by letter dated 22-03-2004, she was sent on retirement as she had passed the retirement age and had not applied for an extension. The appellant submitted that at that time the respondent was also found guilty of misconduct.

The respondent had thereafter preferred an appeal to the Co-operative Employees Commission under Section 11 (1) (e) of the Co-operative Employees Commission Act, No.12 of 1972. According to the appellant at the hearing of the said appeal, both parties had entered into a settlement where it was decided to remove the charge of misconduct and that the respondent would be sent on retirement subject to giving her a certificate of appreciation with all other retirement benefits.

The appellant submitted that in fulfilment of the aforementioned conditions, the respondent was sent on retirement after giving her a certificate of appreciation. Further it was submitted that, she was also given all the retirement benefits.

The appellant submitted that, having received all the aforementioned, the respondent had filed an application before the Labour Tribunal against the appellant.

The Labour Tribunal, after hearing both parties had made order on 21-02-2007, whereby the appellant was ordered to pay the respondent 24 months salary as compensation. The said decision was affirmed by the High Court on 22-06-2009.

When this matter was taken for hearing, learned Counsel agreed that the only issue that has to be considered is based on the following question:

" Whether the respondent was estopped from filing her application in the Labour Tribunal in view of the provisions in Section 31 B (5) of the Industrial Disputes Act, and Section 39 (1) A of the Co-operative Employees Commission Act, No. 12 of 1972."

Learned Counsel for the appellant contended that in terms of Section 31 B of the Industrial Disputes Act, the Labour Tribunal cannot accept and entertain the application made by the respondent and therefore the said decision of the Labour Tribunal is erroneous.

Learned Counsel for the respondent submitted that the respondent had received the letter of retirement on 22-03-2004 (A4) and she had submitted an appeal exercising her right of appeal on 23-03-2004 (A5). By letter dated 03-11-2004, she had received a reply (A6). Thereafter she had taken steps to file an application before the Labour Tribunal and the said application was filed on 07-12-2004.

Learned Counsel for the respondent further contended that, in terms of Section 39 (1) of the Co-operative Employees Commission Act, an application cannot be accepted by the Labour Tribunal once an appeal has been filed and in terms of Section 39 (2) an appeal cannot be entertained by the Commission once an application has been submitted to the Labour Tribunal.

Accordingly, learned Counsel for the respondent submitted that as the respondent had filed the application before the Labour Tribunal after she had received a reply for her appeal, there were no restrictions for her to file an application in the Labour Tribunal.

It is not disputed that the appellant and the respondent belong to a Co-operative Society. It is also not disputed that the respondent had preferred an appeal to the Co-operative Employees Commission in terms of Section 11 (1) e of the said Act on 23-03-2004 (A5). Section 39 of the Co-operative Employees Commission Act, as amended, clearly stated in which instances, a Labour Tribunal and/or the Commission can entertain an appeal from an employee. The relevant sections are as follows:

> " 39 (1) - A Labour Tribunal established under the Industrial Disputes Act shall not entertain an application, by an employee, under Section 31 B of that Act, for relief or redress in respect of any matter if an appeal has been made to the Commission by such employee, in respect of the same matter or substantially the same matter.
>
> (2) The Commission shall not entertain an appeal from an employee in respect of any matter, if an application has been made by such employee under Section 31 B of the Industrial Disputes Act, to a Labour Tribunal established under that Act, in respect of the same matter or substantially the same matter.

Part IVA of the Industrial Disputes Act deals with the Labour Tribunal and the application before them. Section 31 B refers to the application made to a Labour Tribunal and reads thus:

> " A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to a Labour Tribunal for relief or redress in respect of any of the following matters:-
>
> a) The termination of his services by his employer;
> . . . . "

Section 31 B (5) of the Industrial Disputes Act deals with the restrictions that are imposed regarding any other legal remedy and states that,

> " Where an application under subsection (1) is entertained by a Labour Tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1)."

Learned Counsel made reference to the decision in the **Independent Newspapers Limited v Commercial and Industrial Workers Union** ([1997] 3 Sri L.R. 197).

In that case the question which came up for consideration was based on the effect of the words of Section 31 B (5) of the Industrial Disputes Act and Section 6 B (2) of Termination of Employment of Workmen (Special Provisions) (Amendment) Act No.51 of 1988. The said Section 6 B (2) reads as follows:

> " Nothing in this Act shall be read and construed as affecting Section 2 or Section 5 of this Act or the rights of a workman whose employment has been terminated to apply for any other legal remedy in respect of that termination or as affecting the jurisdiction of any Court, tribunal or institution to grant relief in respect of such termination."

Considering these two sections, the Supreme Court in **Independent Newspapers Limited** (Supra) had held that,

> " *The* effect of the words of Subsection 5 of Section 31 B is to affect the jurisdiction of the labour tribunal where a workman has first resorted to any other legal remedy. Subsection 6 B (2) of the Termination of Employment (Special Provisions) Act effectively removes that obstacle in so far as a workman had first resorted to a legal remedy before the Commissioner."

It was clearly shown in the said decision that the effect of the words contained in Section 31 B (5) of the Industrial Disputes act was to affect the jurisdiction of the Labour Tribunal.

Section 39 of the Co-operative Employees Commission Act, as amended, referred to earlier, is however different to Section 6 B (2) of Termination of Employment of Workmen (Special Provisions) (Amendment) Act.

A plain reading of the said section clearly shows that it does not prevent an employee resorting to any other legal remedy in respect of his termination of employment.

The effect of Section 39 of the Co-operative Employees Commission (Amended) Act, No. 51 of 1992, referred to earlier, however is different. Section 39 (1) restricts an application being made before the Labour Tribunal in terms of Section 31 B of the Industrial Disputes Act, if an application had been already made to the Commission by an employee on the same matter. Similarly, Section 39 (2) of the said Act had made provision, not to entertain an appeal from an employee on any matter, if an application has been made to the Labour Tribunal.

In effect, the Co-operative Employees Commission Act, as amended, has made provision for the curtailment of duplication of actions in respect of the same matter or substantially the same issue.

As stated earlier, the respondent was sent on retirement by letter dated 22-03-2004 (A4). It is common ground that the respondent had submitted an appeal to the Co-operative Employees Commission, which was taken for inquiry in October 2004. The decision of the said inquiry was informed both to the appellant and to the respondent by letter dated 03-11-2004 (A6) which was as follows:

“ සභාපති,

සී.ස. කොළඹ නගර සභා

සේවකයන්ගේ ඉතිරි කිරීමේ සමිතිය.

එච්. හෙට්ටිආරච්චි මහත්මියගේ අභියාචනය

ඔබගේද සහභාගීත්වයෙන් යුතුව 2004.10.12 වන දින මෙම කොමිෂන් සභා කාර්යාලයේදී පැවති උක්ත අභියාචනා පරීක්ෂණය හා සබැඳේ.

02. එකී පරීක්ෂණයේදී දෙපාර්ශවය එකඟ වූ පරිදි එච්. හෙට්ටිආරච්චි මහත්මියගේ දීර්ඝ සේවා කාලය ගැන සලකා ඇය වෙත නගා ඇති විෂමාචාර චෝදනාව ඉවත් කොට සේවය අගැයීමේ සහතිකයක් ලබා දී සියලුම හිමිකම් සහිතව ඇය විශ්‍රාම යැවීමට පියවර ගන්නා ලෙස කොමිෂන් සභාවේ නියමය පරිදි මෙයින් ඔබට දන්වමි.”

Thereafter the respondent had filed an application before the Labour Tribunal in terms of Section 31 (B) of the Industrial Disputes Act on 04-12-2007. In that application, respondent has clearly stated that her appeal was considered by the Co-operative Employees Commission. The relevant portion of her application before the Labour Tribunal is as follows:

" . . . .

5. සමුපකාර කොමිෂන් සභාවේ ලේකම් විසින් 3.11.2004 වන දිනැති ලිපිය මගින් ඉල්ලුම්කාරිය විසින් යවන ලද අභියාචනයට පිළිතුරු එවන ලදී. ඒ මගින් ඉල්ලුම්කාරියට සියලුම හිමිකම් ලබා දී විශ්‍රම ගැන්වීමට පියවර ගන්නා මෙන් දන්වන ලදී.

6. ඉල්ලුම්කාරිය සැලකර සිටින්නේ ඇයට එරෙහිව කිසිදු විනය පරීක්ෂණයක් නොපැවැත්වූ බවත්, ඇය සම්පූර්ණයෙන්ම නිර්දෝෂී පුද්ගලයෙකු වන බවයි. මෙලෙස අත්තනෝමතික ලෙස ඇයව සේවයෙන් විශ්‍රාම ගැන්වීම කාර්මික ආරවුල් පනත යටතේ සේවය අවසන් කිරීමක් බවත්, ඇය ප්‍රකාශ කර සිටියි. "

The said contents of the application made before the Labour Tribunal, clearly shows that the appeal before the Co-operative Employees Commission and the application before the Labour Tribunal was filed for relief on the same matter. In terms of Section 39 (1) (A) of the Co-operative Employees Commission Act, as amended, there was no provision for the Labour Tribunal to have entertained the said application under Section 31 B of the Industrial Disputes Act, as an appeal was made to the Co-operative Employees Commission by the respondent on the same matter.

For the reasons aforesaid, the question on which this appeal was heard is answered in the affirmative.

This appeal is accordingly allowed. The order made by the Labour Tribunal dated 21-02-2007 and the Judgment of the High Court dated 22-06-2009 are set aside.

I make no order as to costs.

Chief Justice

K. Sripavan, J.

I agree.

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree.

Judge of the Supreme Court