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

In the matter of an application for Special Leave to Appeal from a Judgment of the Provincial High Court of the Southern Province holden in Galle in terms of the Industrial Disputes Act and the High Court of the Provinces (Special Provisions) Act No. 10 of 1990

**Shanthi Sagara Gunawardena,**
**'Sea Sand', Habakkala,**
**Induruwa.**

**Appellant**

**SC Appeal 89/2016**
**SC SPL/LA 229/2015**
**GL/HC/LT/AP/1044/13**
**LT 4G/112/2011**

**Vs,**

1. **Ranjith Kumudusena Gunawardena**
2. **Indika Gunawardena**
3. **Nirosha Gunawardena**

All of
8D 17, National Housing Scheme, Raddolugama

**Respondents**

## And between

**Ranjith Kumudusena Gunawardena**
8D 17, National Housing Scheme, Raddolugama

**1st Respondent -Appellant**

**Vs,**

**Shanthi Sagara Gunawardena,**
**'Sea Sand', Habakkala, Induruwa**

**Applicant-Respondent**

2. **Indika Gunawardena**
3. **Nirosha Gunawardena**

Both of
8D 17, National Housing Scheme, Raddolugama

**Respondents-Respondents**

## And now between

**Shanthi Sagara Gunawardena,**
**'Sea Sand', Habakkala, Induruwa**

**Applicant-Respondent- Appellant**

**Ranjith Kumudusena Gunawardena**
8D 17, National Housing Scheme,
Raddolugama

**1st Respondent -Appellant-Respondent**

2. **Indika Gunawardena**
3. **Nirosha Gunawardena**

Both of
8D 17, National Housing Scheme,
Raddolugama

**Respondents-Respondents-Respondents**

**Before:** **Hon. Vijith K. Malalgoda PC J**

**Hon. M.N.B. Fernando PC J**

**Hon. E.A.G.R. Amarasekara J**

Counsel: Suren Fernando with K. Wickramanayake for the Applicant-Respondent-Appellant

Pradeep Fernando for the 1st Respondent-Appellant-Respondent

**Argued on: 08.02.2019**

**Decided on: 02.04.2019**

## Vijith K. Malalgoda PC J

The Applicant-Respondent-Appellant (hereinafter referred to as the 'Appellant') has instituted proceedings before the Labour Tribunal of Galle against the 1st Respondent-Appellant-Respondent (hereinafter referred to as the 1st Respondent) and 2nd and 3rd Respondent-Respondent-Respondents (hereinafter referred to as 2nd and 3rd Respondents) alleging that the said Respondents had wrongfully and unlawfully terminated his services from the post of Superintendent, at a Cinnamon Plantation called "Punchimalakanda".

The Respondents, responded to the complaint made against them, denying the employment of the Appellant and the inquiry proceeded before the Labour Tribunal on that basis.

At the conclusion of the said inquiry, the Labour Tribunal held in favour of the Appellant and ordered compensation in a sum of Rupees 375000/- to be paid to the Appellant for the wrongful termination.

Being aggrieved by the said order, the 1st Respondent appealed to the Provincial High Court of Galle and the said Provincial High Court by its judgment dated to 6th October 2015, allowed the said appeal and set aside the findings of the Labour Tribunal dated 11.11.2013.

The Appellant who was aggrieved by the said judgment of the Provincial High Court of Galle had preferred the instant application before the Supreme Court seeking special leave to challenge the

above findings and when this matter was supported, this court granted special leave on questions of law raised by the Appellant in paragraph 13 (a) – (e) of the petition dated 12.11.2015 which reads as follows;

a) Did the learned Judge of the Provincial High Court fail to assess the evidence in an overall manner?
b) Did the learned Judge of the Provincial High Court err in law in analyzing and applying the applicable principles of the law of evidence and especially the burden of proof?
c) Did the learned Judge of the Provincial High Court err in law in failing to appreciate the jurisdiction of the High Court in terms of section 31D (3) of the industrial Disputes Act?
d) Did the learned Judge of the Provincial High Court fail to appreciate that there was no error of law on the part of the learned President of the Labour Tribunal which warranted the invocation and/or exercise of the appellate jurisdiction of the High Court?
e) Did the learned Judge of the Provincial High Court err in law in failing to analyze and apply the applicable legal principles and/or evidence pertaining to calculation of compensation?

It is well settled legal principle, that it is not open for Appellate Court to re-examine and re-appraises the evidence analyzed by the learned President of the Labour Tribunal. Hence an Appellate Court in appeal will not re-examine and/or re- appraises the material considered before the Labour Tribunal unless there is a question of law on the face of the Record.

Section 31D of the ***Industrial Dispute Act No. 43 of 1950*** also state that;

> "That the order of a Labour Tribunal shall be final and shall not be called in question in any court except on a question of law"

However an exception to the above rule was discussed in the case of ***Jayasuriya V.Sri Lanka State Plantations Corporation (1995) II Sri LR 379*** when *Dr. Amarasinghe J* had observed that;

> "The industrial Disputes Act No. 43 of 1950 states in section 31D that the order of a Labour Tribunal shall be final and shall not be called in question in any court except on a question of law. while Appellate Courts will not intervene with pure findings of fact e.g. ***Somawathie vs. Baksons Textile Industries Ltd***, ***Caledonan (Ceylon) Tea and Rubber Estates Ltd vs. Hillman***, ***Thevarayan vs. Balakrishnan***, ***Nadarajah vs. Thilagaratnam***, yet if it appears that the Tribunal has made a finding wholly unsupported by evidence ***Ceylon Transport Board vs. Gunasinghe***, ***Colombo Apothecaries Co. Ltd vs. Ceylon Press Workers' Union***, ***Ceylon Oil Workers' Union vs. Ceylon Petroleum Corporation***, or which is inconsistent with the evidence and contradictory of it ***Reckitt & Colman of Ceylon Ltd vs. Peiris***, or where the Tribunal has failed to consider material and relevant evidence ***United Industrial Local Government & General Workers' Union vs. Independent Newspapers Ltd***, or where it has failed to decide a material question ***Hayleys Ltd vs. De Silva*** or misconstrued the question at issue and has directed its attention to the wrong matters ***Colombo Apothecaries Co. Ltd vs. Ceylon Press Workers' Union (Supra)***, or where there was an erroneous misconception amounting to a misdirection ***Ceylon Transport Board vs. Samastha Lanka Motor Sevaka Samithiya***, or where it failed to consider material documents or misconstrued them (***Virakesari Ltd vs. Fernando***) or where the Tribunal has failed to consider the version of one party or his evidence ***Carolis Appuhamy vs. Punchirala***, ***Ceylon Workers' Congress vs. Superintendent, Kallebokke Estate*** or erroneously supported there was no evidence ***Ceylon Steel Corporation vs. National Employees' Union*** the finding of the Tribunal is subject to review by the Court of Appeal."

Further in the case of ***Kotagala Plantations Ltd and Lankem Tea and Rubber Plantations (Pvt) Ltd V. Ceylon Planters' Society SC Appeal 144/2009*** SC minute 15.12.2010 *J.A.N de. Silva CJ* had observed that;

> …. "It is not for an Appellate Court to review the evidence and come to a different conclusion regarding the facts of the case unless the findings on the fact by the Tribunal was against the weight of the evidence. In fact on a reading of the entirety of the judgment of the High Court it would appear that the High Court Judge has misdirected himself"

As revealed before this court the Appellant and the 1st Respondent are brothers and the 2nd and 3rd Respondents are the children of the 1st Respondent. The land by the name of 'Punchimalakanda' was a five acre Cinnamon Plantation owned mainly by the 1st Respondent and his brother, the Appellant too had a small portion of land closer to Punchimalakanda land where he too had cultivated cinnamon.

It was the position taken by the Appellant, that since his retirement in the year 1996, he was employed by his brother as the superintendent of the said land and he continued to maintain the said land under the instruction of the 1st Respondent until the 1st Respondent transferred the said land to his children, the 2nd and 3rd Respondents. The 2nd and 3rd Respondents being the new owners of 'Punchimalakanda, decided to dispose the said property after discontinuing, the services of the Appellant.

However the above position taken by the Appellant was challenged by the 1st Respondent and it was the position taken by the 1st Respondent that he continued to live in their ancestral home and attended to the cinnamon cultivation on his own.

Both parties have challenged each other with regard to the position taken up by them before the Labour Tribunal and several documents including extracts of Electoral Registers were also produced before the tribunal in order to assist the tribunal to come to a just an equitable finding. In this regard we further observe that the permanent residency of the 1st Respondent and the extent to which he could involve in cultivation of cinnamon including fertilizing, maintaining and harvesting cinnamon of the 5 acre land were matters to be decided by the Labour Tribunal and all the said matters were questions of facts to be decided by the president of the Labour Tribunal.

However as observed by this court the learned High Court Judge in his very short judgment had considered some of the facts such as the period spent for fertilizing the land and whether it is a full time job for a person to look after five acre land and had decided to reverse the conclusions reached by the President of the Labour Tribunal merely on few observations made on those points, to which he is not entitled without analyzing the entirety of the evidence and come to a finding that the findings of the President of the Labour Tribunal are against the weight of the evidence led before the tribunal.

Even though the learned High Court Judge had observed that the tribunal has failed to give due consideration to the evidence placed before it when concluding that the Appellant was employed by the Respondents at 'Punchimalakanda' and thereby his services were wrongfully and unlawfully terminated as complained by the Appellant, I see no merit in the said observations made by the learned High Court Judge since it appears on perusal of the said order, that the Tribunal had taken considerable effort to reach the said conclusion.

In the case of ***Air Port and Aviation (SL) Ltd Vs. K.D.H. Sunil SC Appeal 147/94*** SC minute dated 23.03.1995 it was observed that,

> "Undoubtedly the President of the Labour Tribunal had advantage of seeing and hearing the witnesses and observing their demeanors and was thus in a better position to assess their evidence in relation to the questions of fact. In any event, it was not open to the High Court Judge to interfere with such finding based on credibility, in the absence of an error of law."

In the case of ***Ceylon Cinema and Film Studio Employees' Union V. Liberty Cinema Ltd (1994) 3 Sri LR 121 at 124*** this issue was once again observed by court and held;

> "It may be possible that the Appellate Court may come to a different finding on facts but the evaluation of the facts is a matter for the tribunal"

In the said circumstances, I observe that the learned High Court Judge had misdirected himself when he conclude that the President of the Labour Tribunal had failed to give due consideration to the evidence placed before the tribunal.

Based on the above conclusion the learned High Court Judge had further observed that the President of the Labour Tribunal could not have come to a just and equitable finding that there is a termination of the Appellant by the Respondents and the said termination is wrongful and unlawful. When reaching the said conclusion the learned High Court Judge had referred to the decisions in ***Ceylon Transport Board V. Gunasinghe 72 NLR 76*** and ***Suprintendent Nakiyadeniya Group V. Coranelishamy 72 NLR 142***.

However it is observed that, *Weeramanthri J* in the case of ***Ceylon Transport Board V. Gurusinghe 72 NLR 76*** had identified the need for a proper finding on facts by the President of the Labour Tribunal in the following terms,

> "Proper finding of facts are necessary basis for the exercise by Labour Tribunals of that wide jurisdiction given to them by the statute of making such orders as they consider to be just

> and equitable, where there is no such proper findings of fact the order that ensues would not be one which is just and equitable upon the evidence placed before the Tribunal, for justice and equity cannot be administered in a particular case apart from its own particular facts".

As referred to above in my judgment, the President has clearly analyzed the evidence placed before the tribunal by both parties and come to a just and equitable finding. In the said circumstances, I see no merit to the said observation made by the learned High Court Judge.

In this regard this court is further mindful of the decision in ***Asian Hotels and Properties PLC V. Benjamin and five others (2013) 1 Sri LR 407 at 414*** where *Dr. Shirani Bandaranayake (CJ)* had observed that,

> "It is well settled law that the Labour Tribunals are expected to grant just and equitable reliefs. It is also necessary to be born in mind that for the purpose of granting such relief there is no necessity for the Labour Tribunals to follow rigid rules of law."

The learned High Court Judge had further observed that granting of compensation in a sum of Rupees 375000/- is excessive for the reason that the learned President of Labour Tribunal when granting the said compensation was of the view that the Appellant could work for further 12-15 years until he reached the age of 70 years.

As revealed before us, the Appellant's contention was to receive compensation in lieu of re instatement since the land in question had been transferred to a third party at the time he came before the Labour Tribunal. In the said circumstances question of re- instatement was not a matter to be considered by the President of the Labour Tribunal.

Discretion of deciding the amount of compensation is a matter for the President of the Labour Tribunal and, he has to consider the facts and circumstances of each case when using his discretion. This position was decided in the case of ***Up Country Distributors (PVT) Ltd vs. Subasinghe (1996) 2 Sri LR 330*** as follows;

> "The award made by the tribunal is just and equitable. The tribunal has discretion in determining the quantum of compensation, on the basis of the facts and circumstances of each case. That discretion should not be unduly fettered."

In the same case *Wijetunga J* had further observed,

> "The legislature has in its wisdom left the matter in the hands of the tribunal, presumably with the confidence that the discretion would be duly exercised. To my mind some degree of flexibility in that regard is both desirable and necessary if a tribunal is to make a just and equitable order."

The roll of the Labour Tribunal when granting compensation was discussed by *Vythialingam J* in the case of ***Ceylon Transport Board vs. A.H. Wijeratne 77 NLR 481*** as follows;

> "In making an order for the payment of compensation to a workman in lieu of an order for reinstatement under section 33 (5) of the Industrial Disputes Act, a Labour Tribunal should take into account such circumstances as the nature of the employer's business and his capacity to pay, the employee's age, the nature of his employment, length of service, seniority, present salary, future prospects, opportunities for obtaining similar alternative employment, his past conduct, the circumstances and the manner of the dismissal including the nature of the charge leveled against the workman, the extent to which the employee's actions were blameworthy and the effect of the dismissal on future pension rights. Account

should also be taken of any sums paid or actually earned or which should also have been earned since the dismissal took place."

As observed by me the tribunal after concluding that the Appellant was wrongfully and unlawfully terminated by the 1st Respondent, had proceeded to consider the relief that could be granted as follows;

"මෙම නඩුවේ ඉල්ලුම්කරු 1 වන වගඋත්තරකරු තම ඉල්ලුම්පත්‍රයෙන් සේවයෙන් පහ කිරීම සඳහා වන්දි මුදලක්ද, සියළුම ව්‍යවස්ථාපිත දීමනාද අයැද ඇත. මෙම ඉල්ලුම්කරු නැවත සේවයේ පුනස්ථාපනය කිරීමට හැකියාවක් නොමැති බව පැහැදිලිය. ඒ අනුව ඔහුගේ සේවය අවසන් වීම වෙනුවෙන් ඔහුට වන්දි මුදලක් ප්‍රදානය කිරීම සුදුසු බව තීරණය කරමි.

1996 වර්ෂයේ සිට ඉල්ලුම්කරු 1 වන වගඋත්තරකරු යටතේ වසර 15 ක් සේවය කර ඇති බව සාක්ෂිවලින් හෙළිදරව් වේ. (ඔහු 1973 වර්ෂයේ සිට අර්ධ කාලීන සේවකයකු ලෙස සේවය කල බව කියා ඇත. එකී අර්ධ කාලීන සේවය මෙම ගණනය කිරීම් වලට ඇතුලත් කර නොමැත) ඉල්ලුම්කරුගේ දැන් වයස අවුරුදු 57 කි. ඔහුට වෙනත් රැකියාවක් සොයා ගැනීමට ඔහුගේ වයස බාධාවක් බව පැහැදිලිය. ඔහුට තව වසර 12-15ක් පමණ සේවය කිරීමට හැකි බව ඔහු කියා ඇත. ඉල්ලුම්කරු නිරෝගී, සෞඛ්‍යය සම්පන්න පුද්ගලයකු බැවින් විනිශ්චයාධිකාරයට එම ප්‍රකාශය සමඟ එකඟවීමට හැකය. ඒ අනුව ඉල්ලුම්කරුට තම රැකියාව අහිමිවීම වෙනුවෙන් ඔහුට සිදුවූ පාඩුව සහ 1 වන වගඋත්තරකරුගේ ගෙවීමේ හැකියාවද සැලකිල්ලට ගෙන ඉල්ලුම්කරුට වන්දි මුදලක් ප්‍රධානය කිරීම සුදුසු බව පෙනේ. 1 වන වගඋත්තරකරුට දැනට කුරුඳු ඉඩමෙන් ආදායමක් නොලැබේ. දේපොළ විකුණා ලැබුණු මුදල් ද ඔහුට ලැබුණු බවට සාක්ෂි නැත. එම කරුණු කෙරෙහිද අවධානය යොමු කිරීම අවශ්‍යය. ඉල්ලුම්කරුගේ සේවාකාලය වසර 15ක් බැවින් ඔහු සේවය කළ එක් වසරකට මාස 2ක වැටුප බැගින් ඔහුට වන්දි වශයෙන් හිමි විය යුතු බව තීරණය කරමි."

The tribunal has correctly considered all relevant issues and decided to grant 30 months compensation in lieu of re- instatement and I see no reason to interfere with the compensation awarded by the tribunal on the Appellant.

For the above reasons, I answer the questions of law raised in this case in the affirmative and allow the appeal.

Appeal is allowed.

Judge of the Supreme Court

**Justice M.N.B. Fernando PC**

**I agree,**

Judge of the Supreme Court

**Justice E.A.G.R. Amarasekara**

**I agree,**

Judge of the Supreme Court