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

SC/APP/167/2014

SC/SPL/LA 42/2014

CA/WRIT/79/2009

Industrial Arbitration No. A 3043

Ceylon Electricity Board,
No. 50, Sir Chittampalam A. Gardiner Mawatha,
P.O. Box 540,
Colombo 02.

PETITIONER

- VS -

1. Hon. Athauda Seneviratne,
   Minister of Labour and Man Power,
   Ministry of Labour and Man Power,
   Labour Secretariat,
   Colombo 05.

2. D.S. Edirisinghe,
   Commissioner General Labour,
   Department of Labour,
   Labour Secretariat,
   Colombo 05.

3. K. M. Sarathchandra,
   No. 53/2, Nawala Road,
   Nugegoda.

4. G. D. Abayaratne,
   No. 130, Sri Devananda Road,
   Piliyandala.

5. H. D. Thilakaratne,
   "Prabha",
   Koshenawatta,
   Madulawa Road,
   Watareka,
   Meegoda.

RESPONDENTS

AND NOW BETWEEN

Ceylon Electricity Board,
No. 50, Sir Chittampalam A. Gardiner Mawatha,
P O Box 540,
Colombo 02.

PETITIONER – APPELLANT

- VS -

1. Hon. Athauda Seneviratne,
   Minister of Labour and Manpower,
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   Madulawa Road,
   Watareka,
   Meegoda.

RESPONDENTS – RESPONDENTS

Before : Murdu N.B. Fernando, PC, J.
E.A.G.R. Amarasekara, J.
Achala Wengappuli, J.

Counsel : Uditha Egalahewa PC with Ranga Dayananda for the Petitioner – Appellant.

Sanath Weerasinghe with Sahan Weerasinghe for the substituted 4th and 5th Respondents – Respondents.

Ganga Wakishtaarachchi SSC for the 1st & 2nd Respondents.

Argued on : 28.02.2022

Decided on : 23.05.2025

E.A.G.R Amarasekara, J.

This is an appeal by the Petitioner – Appellant, the Ceylon Electricity Board (hereinafter sometimes referred to as the "Appellant Board" or "The Board"), against the Judgement of the Court of Appeal, delivered in case No. CA/W/79/2009, dated 10.02.2014, in favour of the 4th and 5th Respondents – Respondents (hereinafter sometimes referred to as the "4th and 5th Respondents") affirming the Award delivered by the 3rd Respondent-Respondent (hereinafter sometimes referred to as the "3rd Respondent") in Industrial Arbitration No. A 3043, dated 02.10.2008.

The Appellant Board was established in terms of the Ceylon Electricity Board Act No. 17 of 1969 as amended (hereinafter sometimes referred to as "the CEB Act"), to take over the functions and activities of the then Department of Government Electrical Undertakings (DGEU).

Pursuant to S. 12 (j) of the CEB Act, the Pension Fund of the Appellant Board was established for the payment of pension to the eligible employees and the Rules governing the said Pension Fund approved by the Appellant Board were circulated by Circular No. 29/1994 – vide pages 492- 506 of the brief. The pension regulation which corresponds to the said rules were published in the Government Gazette bearing No. 1321/18 dated 31.12.2003 (vide pages 399-405), placed before the Parliament for approval and ratification by the Parliament. The Pension Regulation included the following Regulations:

Regulation 3 of the Pension Regulations: "*Commencing from the month of January 1994, the Board shall remit monthly to the Pension Fund a sum of money equivalent to 7% of the total salaries of all employees computed on the aggregate salary on which contributions are made to the Provident Fund. …..*"

Regulation 18.1 of the Pension Regulations: *It shall be lawful for the Board by decision of the Board from time to time and at any time hereinafter to alter, vary, modify, re-make or rescind them, some or any of them, subject to the approval of the Commissioner of Labour and Commissioner of Inland revenue.*

Regulation 22.1 of the Pension Regulations: "*An employee to become eligible for the pension shall have completed as at the date of his retirement 240 months of service in the Ceylon Electricity Board. The full period of service shall be continuous and shall have contributions made to the Provident Fund*."

Regulation 22.7 of the Pension Regulations: *A period of service after retirement at 60 years of age shall not be counted as the service for the purpose of pension.*
(Above regulation No.3, 22.1 and 22.7 correspond to the Rule 3,22.1 and 22.7 circulated through the aforesaid circular)

It appears that the 4th and 5th Respondents and two officers from the Appellant Board were called to give evidence before the 3rd Respondent Arbitrator and the 4th and 5th Respondents had tendered documents marked A1 -A34 in support of their case before the said Arbitrator. The Appellant Board had not led any witnesses and had tendered documents marked V1 – V5.

In fact, the following factual circumstances are evinced through the evidence available and/or not in dispute between the parties;

- That the 4th and 5th Respondents were Employees of the Appellant Board and retired after completion of 60 years of service,
- That the 4th and 5th Respondents had made a complaint to the Commissioner General of Labour, the 2nd Respondent-Respondent, claiming that they had been deprived of their pension rights by the Appellant Board, and the Minister of Labour and Manpower, the 1st Respondent-Respondent referred the said Industrial Dispute in terms of section 4(1) of the Industrial Dispute Act No.43 of 1950 (as amended) and appointed the 3rd Respondent as the Arbitrator,
- That the 4th Respondent was 43 years old when recruited as a Training Officer on 02.01.1984 and had retired on 09.06.1999, thereby completing 186 months of service in the Appellant Board,
- That the 5th Respondent was 41 years when recruited as an Administrative Office on 01.03.1985 and retired on 14.03.2004, thereby completing 228 months of service in the Appellant Board,
- That both 4th and 5th Respondents – Respondents retired upon completing the compulsory retirement age of 60 years,
- That, even though there is a requirement for an employee to complete an uninterrupted 240 months service at the Appellant Board on the date of retirement to qualify for pension as per the aforementioned rules and/or regulations, the Appellant Board on certain occasions had acted in contrary and granted pension rights to some of the employees who had not completed the said 240 months (thus, 20 years) service by adjusting and/or relaxing and/or circumventing the said rules or regulations.

Those employees who did not complete the said 240 months period of service were Mr. C.N.D Perera (19 years 09 months 12 days), Mr. P. Weerasingham (19 years 07 months and 12 days), Mr. A. Jesudasan (19 years 10 months 30 days), Mr. T.V. Parameswarana (19 years and 04 days), Mr. N.J.L. Fernando (19 years 11 months and 25 days), Mr. C.J. Hapugoda (19 Years 03 Months and 12 days), and Mr. A. Kugamoorthi (18 years 10 months and 13 days). It appears that, to grant pension rights to those employees, the Appellant Board, on previous occasions, had relaxed the application of the said rules and/or regulations in contrary to the stipulations made therein as to the minimum continues service period 240 months at the time of the retirement and/or the need to have made contribution to the provident fund and /or the prohibition to consider the service done after the retirement at age 60 (vide regulation 22.7) etc. Other than the above, the 4th and 5th Respondents have stated two occasions where the aforesaid regulations were relaxed regarding an employee named S. I. Fernando (due to a

recommendation from the Parliamentary Ombudsman) and an employee named Y. Dharmadasa (due to an award of an arbitration).

The 4th and 5th Respondents have never claimed that they had completed 240 months of service period as contemplated by the Pension regulations and/or Rules. In short, their position is that the Appellant Board in certain occasions circumvented or relaxed or adjusted the pension regulations and/or rules to grant pension rights. Thus, the Appellant Board should have in a similar manner acted towards their rights and granted them the Pension Rights. They, on the other hand, endeavor to point out that they have a legitimate expectation in this regard. It is also brought to the attention of Court that they joined the Appellant Board when the upper age limit to join was 45 years and they were 43 and 41 years of age when they joined the Appellant Board as employees. Thus, they could never have 240 months of service when they reached the compulsory retirement age of 60 years.

On the other hand, the Appellant Board, does not deny that such deviations from the pension rules and/or regulations occurred in the past for some of the employees. Its position seems to be that if there is an illegality attached to such deviations, it cannot be allowed to be continued and/or one or several wrong doings should not be a reason to ignore what is legal and lawful and/or equal treatment and/or legitimate expectation cannot be based on an illegality and/or a wrong practice or an action.

After an inquiry, on 02.10.2008, the 3rd Respondent delivered an Award on the said reference of the industrial dispute by the 1st Respondent-Respondent. The 3rd Respondent concluded that the Appellant Board should grant pension rights to the 4th and 5th Respondents and the computation of the pension has to be done on a pro rata basis, taking pension benefits entitlement for 20 years' service as the basis. The 3rd Respondent Arbitrator in his Award had indicated the following reasons for his decision;

I. According to the Pension fund Regulation, which came into effect from 01.01.1994, the Appellant Board had remitted 7% of the total of salaries of all the employees computed on the aggregate salary on which contributions are made to the Provident Fund.

II. Further, as per Rule 22.1, for an employee to be eligible for pension, the employee, at the date of his retirement, should have 240 months of service in the Appellant Board. The full period should have been continuous, and the employee should have made contributions to the Provident Fund.

III. The Appellant Board had granted pension benefits to certain officers who had not completed the said 240 months of service at the time of their retirement. According to evidence given by A. Rajakulendran, Finance Manager of the Appellant Board, they were granted pension benefits after presenting "Board Paper". It is clear that pension benefits were granted to them under special circumstances even though they had not completed mandatory 240 months of service at the time of their retirement.

IV. At the time of retirement, the 4th and 5th Respondents were short of 45 months and 12 months of service respectively to become eligible for the pension. During their period of employment, the Appellant Board had remitted to the pension fund out of their salaries as mentioned in (I) above.

V. There is no fairness that the Appellant Board had made adjustment to the Pension Rules in order to grant pension benefits only to a selected few who had not qualified according to the said rules, and thus, it is not just and equitable to deprive pension benefits to employees who have worked for many years merely because they are short of mandatory 240 months.

VI. In terms of the decision in **State Bank of India v Edirisinghe** (1991) 1 Sri L R 397, Arbitrator of an industrial dispute has to make an award which is just and equitable and he is not tied down and fettered by the terms of the contract of employment. He can create new rights and introduce new obligations between parties. The effect of an award is to introduce terms which become implied terms of the contract.

VII. Therefore, the 4th and 5th Respondents should be granted pension rights and for the computation of such rights to be done on a pro rata basis considering retirement benefit entitlement for 20 years' service as the base.

When the above, especially when (I) and (IV) above, are read together, it appears that the 3rd Respondent was under the impression that the 7% was deducted from the salaries of the employees but as per the regulation 3 mentioned above, the Appellant Board has to remit the 7% of the total salaries of all employees computed on the aggregate salary on which contributions are made to the Provident Fund. This might have happened owing to the fact that the 5th Respondent had indicated in his evidence that 7% was deducted from his salary. However, I cannot find any pay sheet marked in evidence in this regard. The Counsel for the Appellant Board has stated in his submission that it was the Appellant Board which remitted the 7% and no deductions were made from the salaries given to the employee, and the said fact was admitted during the argument at the Court of Appeal. Even if it is considered as a disputed fact, writ jurisdiction is not to decide on factual circumstances which are in dispute and it is to decide on legality of the impugned decision.

Being aggrieved by the above-mentioned Award, the Appellant Board instituted a Writ Application bearing No. CA/W/79/2009 in the Court of Appeal seeking *inter alia* a mandate in the nature of a Writ of Certiorari to quash the Award. The Court of Appeal dismissed the said Writ Application by its Judgment dated 19.02.2014, based on the following grounds:

- The Court of Appeal had no reason to intervene with the Award of the 3rd Respondent as it was made after due consideration of evidence and facts placed before the 3rd Respondent.

- The 3rd Respondent had considered both law and equity, which did not exceed his jurisdiction.

- Mere admission of the 3rd and 4th Respondents before the Industrial Arbitration that they realized at the time of recruitment that they will not be qualified for the Pension Regulation does not mean that they did not have a legitimate expectation.

In coming to the said conclusions, the learned Court of Appeal Judge has indicated that legitimate expectations may stem either from a promise or a representation by a public body or from a previous practice.

Hence, it appears that the learned Court of Appeal Judge took the previous incidents of circumventing and/or relaxing and/or adjusting the pension rules or regulations by the Appellant Board as incidents that gave legitimate expectations to the 4th and 5th Respondents.

The Appellant Board, being aggrieved by the Judgement of the Court of Appeal, sought special leave from this Court to appeal against the said Judgment and this Court granted Special Leave to Appeal on 18.09.2014 against the Court of Appeal Judgement on the following questions of law set out in paragraphs 17(f) and (g) of the Petition:

I. *Did the Court of Appeal err in law in directing the Petitioner Board to grant Pension rights to the 4th and 5th Respondents in violation of the statutory provisions and rules/regulations made thereunder?*

II. *Did the Court of Appeal and the 3rd Respondent Arbitrator err in law by directing the Petitioner Board to violate rules and regulations made in terms of Section 56 of the Ceylon Electricity Board Act?*

It is true that as stated in **State Bank of India v Edirisinghe** (1991) 1 Sri L R 397 and **Brown & Company PLC v Minister of Labour** SC Appeal No.108/08 SC minutes dated 17.03.2011 that an Arbitrator has to make a just and equitable order. He is not constrained by the provisions of the contract of employment. It is also true that an industrial arbitrator may settle disputes by dictating new conditions of employments if it is just and equitable. An Industrial Arbitrator may not be governed by the rigid provisions of Evidence Ordinance and the procedure followed by him need not be fettered by the frigidity of law. His role may be more inquisitorial.

It was stated in **Tirunavakarasu v Siriwardena** (1981) 1 Sri L R 185, as follows;
"*An industrial arbitrator has much wider powers both as regards the scope of the inquiry and the kind of orders he can make than an Arbitrator in the Civil Law. In short, we can fairly say that arbitration under the Industrial Law is intended to be even more liberal, informal and flexible than commercial arbitration. And the effect of section 21 of the Industrial Dispute Act is to indicate that even the rules relating to arbitration in the civil law should not be allowed to trammel the powers of inquiry given to an arbitrator under the Act*."

In the case of **The United Engineering Workers Union v K W Devanayagam** 69 N L R 289 it was stated "*In each case the award has to be one which appears to the arbitrator, the Labour Tribunal or the Industrial Court just and equitable. No other criterion is laid down. They are given an unfettered discretion to do what they think is right and fair.*"

The Counsel for the 4th and 5th Respondents has referred to the above judgments in support of the award made by the Arbitrator. However, the question is whether the aforesaid relaxation of rigidity as to the procedure as well as provisions relating to evidence and also for the use of discretion in decision making extends to make an illegality lawful or to direct a party to the arbitration to do what is ultra vires or not lawful. That will be discussed later in this judgment.

The Counsel for the 4th and 5th Respondents further relies on the concept of legitimate expectation. In his post argument written submissions referring to **Kurukulasooriya v Edirisinghe** 2012 (B.L.R.) 66 brings to the attention of Court that it is a concept that has been developed through years, mostly on the basis of procedural fairness and the removal of arbitrary decisions, and indicated that how an undertaking or a thing done or stated by an authority (Representations by an authority) or a regular practice may create a legitimate expectation. Thus, it appears that the position of the 4th and 5th Respondents is that, as the Appellant Board had adopted a mechanism to grant pension rights to some who did not complete the required service period, the said 4th and 5th Respondents had a legitimate expectation that the said Board would have applied the same mechanism to relax, circumvent or adjust the pension rules and /or regulations to grant them pension rights. Here also, it has to be considered whether any practice, undertaking or representation which is not lawful and/or ultra vires and/or contrary to law can give rise to any legitimate expectation. Further, whether one or more wrongdoings can be a basis for one to claim legitimate expectation and ask as of a right to continue with the same wrong doing.

In terms of Section 56 of the CEB Act, every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of the publication or upon such later date as may be specified. Every such regulation has to be placed before the Parliament for approval. Every such regulation deemed to be rescinded as from the date of disapproval by the Parliament but without prejudiced to anything previously done thereunder. Any person who contravenes the provisions of any regulation made under the Act shall be guilty of an offense punishable by a Magistrate. As said before, Pension regulations have been published in the Gazette no. 1321 /18 dated 31.12.2003 vide page 399 of the brief. No one has taken up the position in their submissions that they are not in force or rescinded by the Parliament. Thus, they have the force of law. The relevant Regulations published in the Gazette seems to be similar to the Rules that had been circulated by circular No. 29/1994- vide pages 494- 506 of the brief. In my view, decision making in violation of said Rules when they were relevant also was ultra vires.

As per regulations No. 3 and 22.1 quoted at the beginning of this Judgment, the Appellant Board has to remit monthly to the Pension Fund a sum of money equivalent to 7% of the total

salaries of all employees computed on the aggregate salary on which contributions are made to the Provident Fund, and an employee to become eligible for the pension shall have completed as at the date of his retirement 240 months of service in the Ceylon Electricity Board. The full period of service shall be continuous and shall have contributions made to the Provident Fund. (As said before even the Rules circulated had the same provisions). It is not in dispute that the 4th and 5th Respondents had not completed the service period of 240 months at the date of their retirement. Thus, as per the relevant regulations and/or Rules, it is clear that the 4th and 5th Respondents were not entitled to the Pension rights. Thus, what has to be looked into is whether the Appellant Board should have or could have relaxed, adjusted or circumvented the said regulations and/or rules and granted pension rights to the said Respondents in the manner some were granted the pension rights in contravention to said Regulations and/or Rules. There is no doubt that, on the previous occasions referred to above the Appellant Board acted in contravention to the pension regulations and/or Rules and granted pension. As the said regulations has the force of law, such actions to grant pension on previous occasions were against the regulations and thus, can be termed as illegal actions and also ultra vires. Even acting in contravention of the pension rules prior to the promulgation of the regulations was wrongful and ultra vires. Appellant Board is a statutory body and takes its decisions through its board members and who may be responsible for or answerable for their decision making. Thus, merely because the said Board took certain decisions on previous occasions, which are apparently contaminated with illegality and/or are ultra vires, it is not proper to ask who are involved with decision making at a later stage to follow the previous illegal or ultra vires decisions as they are responsible or answerable for their decision making. It is my view that one or several illegal and /or ultra vires decisions made previously on the same or similar issue do not make it lawful for it to be followed by the successors in decision making or in later decision making. However, it appears that neither the 3rd Respondent Arbitrator nor the Court of Appeal properly observed the illegality or the issues relating to vires that tainted the previous decisions of the Appellant Board. As a result, it appears that the 3rd Respondent Arbitrator and the learned Court of Appeal Judge did not observe the continuation of that illegality that may takes place through their decisions.

In this regard, the Counsel for the Appellant Board has referred to various authorities and case laws in his written submissions, some of which are cited below in this judgment.

The Counsel of the Appellant Board has brought the attention of this Court to **C.W. Mackie & Company Ltd v. Hugh Molagoda, Commissioner-General of Inland Revenue and Others** (1986) 1 Sri L.R. 300 which stated as follows;

"*But the equal treatment guaranteed by Article 12 is equal treatment in the performance of a lawful act. Via Article 12, one cannot seek the execution of any illegal or invalid act. Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, founded in law in contradistinction to an illegal right which is invalid in law*…"

"*The Article 12(1) does not require the authorities to act illegally in one case because they have acted illegally in other cases. The Constitution only guarantees equal protection of law*

and not equal violation of law." (The Counsel has also referred to the **Farook vs. Dharmaratne, Chairman, Provincial Public Service Commission, Uva and Others** (2005) 1 Sri L.R. 133 which cited the above with approval)

The above cases were based on fundamental rights jurisdiction where the Court has wider powers than writ Jurisdiction of the Court of Appeal. However, above decisions indicate that a claim on equal treatment cannot be based on an illegal act but has to be based on or referrable to a lawful act. Thus, an illegality cannot be continued in the guise of maintaining equal protection of law or right to equal treatment. In my view, finding of an illegality is sufficient to exercise writ jurisdiction to quash a decision. However, in view of opinions expressed in the aforesaid decisions, the 4th and 5th Respondents cannot claim equal treatment based on the previous wrongful decisions of the Appellant board.

The Counsel for the Appellant Board, to point out that the Appellant Board was not estopped from making the correct decision merely because the said Board had granted pension rights in contravention of the Pension regulations on previous occasions, has submitted that doctrine of estoppel cannot be claimed on an illegal or unlawful act which is ultra vires. In this regard, the learned Counsel quote **Wade and Forsyth on Administrative Law 10th Edition at page 200** which read as follows;

"*In public law, the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. Thus, where an electricity authority, by misreading a meter, uncharged its customer for two years it was held that the accounts it delivered did not estop it from demanding payment in full, for the authority had a statutory duty to collect the full amount, and had no power to release the customer, expressly or otherwise. Nor could a parish council, which had no power to undertake to allow a neighbouring district to make use of its sewers, be estopped by its long acquiescence from terminating such an arrangement."*

On the other hand, deciding such wrongful or illegal act or acts estops the Appellant Board from abandoning that illegal process or mechanism which was contrary to regulations and /or rules will be an encouragement to continue with an unlawful process of deciding the pension rights.

Now this Court shall consider whether the 4th and 5th Respondent have a legitimate expectation for them to receive pension rights.

The arbitrator, the 3rd Respondent observed in his Award itself that the 5th Respondent in his evidence had stated that he knew when the Pension Fund was introduced, he was not entitled to the Pension Rights. Then at the beginning he could not have any legitimate expectation. Only factual circumstances that may be a reason for such a claim of legitimate expectation by the 4th and 5th Respondents is the granting of pension rights to certain employees by the Appellant Board on certain occasion prior to their retirement. As explained before, those were

contrary to the regulations and/or rules and therefore those decisions were made ultra vires and/or there is an illegality attach to said decision. In this regard, Counsel for the Appellant Board has quoted the texts mentioned below;

Wade and Forsyth on 'Administrative Law' (10th Edition) at page 450:
"*An expectation, whose fulfilment requires that a decision maker should make an unlawful decision, cannot be legitimate expectation. It is inherent in many of the decisions and express in several that the expectation must be within the powers of the decision maker before any question of protection arises*."

Craig on 'Administrative Law' (6th Edition) at page 686:
"The concept of legitimate expectations should play the same general rule in this type of cases, as in relation to intra vires representations. It is a necessary, but not sufficient, condition for the representation to bind the public body. Reasonableness of reliance is a necessary condition for a legitimate expectation. It might be objected that a representee could never have a "legitimate" expectation if the representation was ultra vires. This is, however, merely a restatement of the general rule that ultra vires representations cannot ever bind, which is the very question in issue."

The above clearly indicates neither an expectation, of which the fulfilment requires the decision maker to make an unlawful decision nor an expectation based on an ultra vires representation can be legitimate expectation. It also indicates that reasonableness of reliance is a necessary condition for a legitimate expectation. In the case at hand, previous granting of pension rights to certain employees had been done in contravention of the regulations and/or rules. Thus, they are ultra vires decisions. No reasonable reliance can be placed on such decisions. On the other hand, to fulfil the so-called expectations of the 4th and 5th Respondents, the Appellant Board has to make an unlawful decision against the pension regulations. Thus, those expectations of the 4th and 5th Respondents cannot be identified as legitimate expectations.

In **Ariyarathne and Others v Inspector General of Police and Others** (2019) 1 Sri L R 100 this Court held that "*the law, as it presently stands, is that an assurance given ultra vires by a public authority, cannot found a claim of a legitimate expectation based on that assurance. But, it has to be recognised that there may be many instances where a petitioner who relies on an assurance given by a public authority or one of its officials, reasonably believed that the public authority or official who gave it to him was acting lawfully and within their powers. It is also often the case that an individual who deals with a public authority will find it difficult to ascertain the extent of its powers and those of its officials. In such cases, much hardship will be done to an individual who bona fide relies on an assurance given to him by a public authority or one of its officials and is later told the assurance he relied on and acted upon, sometime with much effort and at great cost to him, cannot be given effect to because of a flaw regarding its vires. In such instances, the principle of legality comes into conflict with the principle of certainty and, the law as it stands now, is that the illegality of the assurance will defeat the value of certainty which contends that the assurance should be given effect*."

The above indicates that one cannot rely on a previous action or practice which were ultra vires to expect that there will be a certainty in following the same actions or practice in the same manner in future similar happenings. Thus, there cannot be a legitimate expectation based on an ultra vires action or practice that took place in the past. As said before, the adjustments, relaxations or circumventions of the Pension Regulations and /or Rules done before are not lawful and/or ultra vires. As per Regulation 18.1 in the aforesaid Gazette (vide pages No. 399 - 405) or rule 18.1 of the pension rules circulated via Circular No. 494 (vide pages 494 to 506), amendments to the regulations or rules can be done by the Appellant Board only with the approval of the Commissioner of Labour and the Commissioner of Inland Revenue. No submission has been made to indicate that such an amendment took place.

In **Walker Sons and Co. Ltd v Fry** 68 N L R 73 and **Municipal Council of Colombo v Munasinghe and four Others** 71 N L R 223 it was held that the duty to make a just and equitable order as contemplated in Industrial Dispute Act does not allow the freedom of a wild horse or ass in decision making. In **Richard Pieris and Co. Ltd. v. Wijesiriwardena** (1961) 62 NLR 233, it was held that "*In regard to the power of the Tribunal to make such order as may appear to it to be just and equitable there is point in Counsel's submission that justice and equity can themselves be measured not according to the urgings of a kind heart but only within the framework of the law."*

Ceylon Tea Plantations Co. Ltd v Ceylon Estates Staffs' Union (SC 211/72, SCM 15/5/74): Rajaratnam J held that just and equitable order must be fair by the parties (vide Nigel Hatch 'Commentary of the Industrial Disputes Act' at page 277. This has also been referred to in SC Appeal 25/2017, SC minutes 31.07.2020)).

Even though, in some of the cases cited by the 4th and 5th Respondents, it is stated that the Arbitrator has an unfettered discretion to do what he thinks is right and fair in making a just and equitable order, that just and equitable order has to be one that can be identified within the framework of law, and it has to be fair by the employee as well as the employer. In that sense, the Arbitrator does not have a freedom of a wild horse to direct one party to take a decision in breach of the law or regulations that the said party is bound to follow.

As explained above, there is an illegality in the previous decisions of the Appellant Board to adjust, relax or circumvent the pension regulations to grant pension rights to some of the employees as they were made in contravention of the said regulations. Thus, they are ultra vires decisions. Any right to equal treatment or a legitimate expectation cannot spring from them. Thus, there is an illegality in the decision of the 3rd Respondent Arbitrator which direct the Appellant Board to do the same illegal or ultra vires act to grant pension rights to the 4th and 5th Respondents. This was sufficient to quash the Award made by the Arbitrator and the learned Court of Appeal Judge erred in its decision to confirm the Award while refusing to issue a writ of certiorari as prayed for by the Appellant Board. Hence, the Court of Appeal Judgement dated 10.02.2014 has to be set aside and the Award dated 02.10. 2008 has to be quashed.

Hence, the questions of law mentioned above are answered in the affirmative and the Judgment of the Court of Appeal dated 10.02.2014 is set aside, and the Court of Appeal is directed to issue a writ of certiorari as prayed for by the Appellant Board to quash the aforesaid Award of the 3rd Respondent Arbitrator in accordance with this Judgment.

Appeal is allowed with costs.

……

Judge of the Supreme Court

Murdu N.B. Fernando, PC, CJ.

I agree

……

The Chief Justice

Achala Wengappuli, J.

I agree

……

Judge of the Supreme Court