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

In the matter of an Appeal against the order dated 2nd April 2018 of the High Court of Northern Province Holden in Jaffna.

SC Appeal 46/2019,
47/2019, 48/2019,
49/2019 and 50/2019

SC (SPL) LA/135/2018,
136/2018, 137/2018,
138/2018 and 139/2018

High Court of Jaffna
Case Nos.
HC/Appeal/2097/2017,
HC/Appeal/2096/2017,
HC/Appeal/2230/2017,
HC/Appeal/2110/2017, and
HC/Appeal/2046/2017

LT Jaffna Case Nos.
LT/JF/23/2016,
LT/JF/12/2016,
LT/JF/16/2016,
LT/JF/11/2016 and
LT/JF/01/2016

1. A. Arunthavam,
   No.112,
   Mill Road,
   Uklangulam,
   Vavuniya.

2. V. Tharsigan,
   Putthur East,
   Sorkathidal.

3. P. Gajamugan,
   Egatiyan,
   Karaveffy East,
   Karaveddy.

4. D. Noyal,
   4th Cross Street,
   Kurthar Kovil Veethy,
   Keeri Mannar.

5. P. Ranjan,
   Kovinthapuram,
   Elavaalai.

Applicants

Vs.

1. Sri Lanka Transport Board,
   Head Office,
   No.200,
   Kirula Road,

Narahenpitiya,
Colombo 05.

2. Inquiry Officer,
   Sri Lanka Transport Board,
   Kondavil (N)
   Jaffna

3. Chairman Appeal Board,
   Sri Lanka Transport Board,
   Kondavil,
   Jaffna.

Respondents

AND BETWEEN

1. Sri Lanka Transport Board,
   Head Office,
   No. 200,
   Kirula Road,
   Narahenpitiya,
   Colombo 05.

2. Inquiry Officer,
   Sri Lanka Transport Board,
   Kondavil (N),
   Jaffna.

3. Chairman Appeal Board,
   Sri Lanka Transport Board,
   Kondavil,
   Jaffna.

Respondents-Appellants

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   Elavaalai.

Applicants-Respondents

AND NOW BETWEEN

1. Sri Lanka Transport Board,
   Head Office,
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   Colombo 05.

2. Inquiry Officer,
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   Kovinthapuram,
   Elavaalai.

Applicants-Respondents-Respondents

Before : **P. Padman Surasena, J**
Mahinda Samayawardhena, J
K. Priyantha Fernando, J

Counsel :

Ranjith Ranawaka with Kosala H. Perera for the Respondents-Appellants-Appellants.

K. V. S. Ganesharajan with M. Mangaleswary Shanker and Mohan Shabishanth for the Applicants-Respondents-Respondents.

Argued on : 23.10.2023

Written Submissions Tendered On : 20.09.2019 on behalf of the Appellants

15.11.2021 on behalf of the Respondents

Decided on : 31.01.2024

K. PRIYANTHA FERNANDO, J

1. The five appeals mentioned above stems from separate applications that had been made by the five bus conductors namely, *A. Arunthavam, V. Tharsigan, P. Gajamugan, D. Noyal, and P. Ranjan* (hereinafter referred to as the 'applicants') to the Labour Tribunal of *Jaffna* under the Industrial Disputes Act, challenging the termination of their services by the Respondents-Appellants-Appellants (hereinafter referred to as the 'appellants') and claiming reinstatement of their services with back wages and compensation.

2. After trial, the learned President of the Labour Tribunal by his orders held in favour of the applicants, reinstating their employment without a break in services. Thereafter, the appellants appealed against the judgments of the learned President of the Labour Tribunal to the High Court of Northern Province holden in *Jaffna* (hereinafter referred to as the 'High Court').

3. The learned Judge of the High Court by his respective judgments, dismissed the appeals, thus, affirming the order of the learned President of the Labour Tribunal that was made in favour of the applicants.

4. Being aggrieved by the decisions of the learned Judge of the *High Court,* the appellants preferred the instant appeals. On 18.02.2019, this Court granted special leave

to appeal on the questions of law raised in paragraphs 7(i) and (iv) of the petition dated 23.07.2018.

The said questions of law are as follows,

(i) The Honorable High Court Judge has failed to consider that the application to the Labour Tribunal **has not** been submitted within the six months period as required by law. Thus the Labour Tribunal has no jurisdiction to entertain such application. The application should have been rejected in *limine*.

(iv). Have the Honorable High Court Judge erred in law by stating in the said Judgment that, "***It is well settled law that the Labour Tribunals are expected to grant "just and equitable reliefs". It is also necessary to be borne in mind that for the purpose of granting such relief there is no necessity for the Labour Tribunals to follow rigid rules of law".***

5. At the hearing of this case, the learned Counsel for the appellants, as well as the learned Counsel for the applicants, agreed that the questions of law raised in all five appeals are the same, and that, it would suffice for this Court to pronounce one Judgment in respect of all five appeals.

6. The learned Counsel for both the appellants and the applicants made submissions with respect to SC Appeal No.46/2019 during the hearing of this case. As agreed by the learned Counsel, this Judgment shall be binding on all five appeals: SC Appeal No.46/2019, SC Appeal No. 47/2019, SC Appeal No. 48/2019, SC Appeal No.49/2019 and SC Appeal No. 50/2019.

Facts in Brief:

7. The applicant was employed as a bus conductor by the appellants since 01.04.2001 and on the day in question he had been attached to *Mullaitivu Bus Depot*.

8. On 18.05.2015, while the applicant was on duty in the bus bearing Registration No. NC-1127, which had been plying from *Mullaitivu* to *Colombo,* the said bus had been inspected by the flying squad. Upon inspection, the flying squad had filed severed charges of fraud against the applicant.

9. As a result of the charges made against him, the Sri Lanka Transport Board (hereinafter referred to as the 'SLTB') had conducted a disciplinary inquiry into the conduct of the applicant.

10. The applicant had been terminated from his service on **30.09.2015**, upon finding him guilty of the charges at the disciplinary inquiry.

11. The applicant claims that, according to the Disciplinary Code of SLTB, if any employee is informed that he is being terminated after a disciplinary inquiry, that employee would have two opportunities to challenge the decision of the board before initiating action before a Labour Tribunal. Firstly, the employee could file an appeal in the Regional Appeal Board in respect of the correctness of the said decision. Secondly, the employee is given the opportunity to file an appeal to the Chairman of SLTB, whose decision is to be treated as final.

12. Therefore, as the applicant had been aggrieved by the said decision of termination after the disciplinary inquiry, the applicant had appealed to the Appeal Board of SLTB.

However, the original decision made at the disciplinary inquiry had been upheld by the Appeal Board on 23.12.2015. Thereafter, the applicant had then appealed to the Chairman of the SLTB under the provisions of the Disciplinary Code of the SLTB. The applicant claims that he had not received any response whatsoever from the Chairman.

13. While this appeal had been pending before the Chairman, the applicant had lodged an application bearing No. **LT/JF/23/2016** at the Labour Tribunal on **18.07.2016**, against the purported termination on **30.09.2015**.

14. The appellants in the instant case takes the position that the said application made by the applicant to the Labour Tribunal had been made after the time limit of six months clearly stipulated by Section 31B (7) of the Industrial Disputes Act and thereby, the application should have been rejected at the Labour Tribunal.

Written Submissions on Behalf of the Appellants:

15. The learned Counsel for the appellants, highlights the importance of section 31B (7) of the Industrial Disputes Act as a mandatory provision that restricts entertaining any application that has been submitted after 6 months of termination. The learned Counsel submitted that, the learned High Court Judge has totally failed to consider averments 14 and 16 of the petition of appeal where the learned Counsel for the appellants have highlighted the statutory provision of Section 31B (7).

16. Furthermore, the learned Counsel takes the position that the conclusions reached by the learned High Court Judge do not have any legal binding, and submitted that, no

discretionary power is granted to the Labour Tribunal or any Court handling a case under the Industrial Disputes Act to overrule the prescriptive period provided in the Act.

17. Where the learned High Court Judge has stated that there is no necessity for the Labour Tribunals to follow the rigid rules of law, the learned Counsel claims that the Labour Tribunals are compelled to follow the statutory provisions already established by statutes and must deliver a just and equitable decision which is within the law.

18. The learned Counsel submitted that the conclusions made by the learned High Court Judge has gone beyond well accepted norms and practices of the Labour Tribunals. The learned Counsel further submitted that the Labour Tribunals are bound to give an order which is just and equitable to both parties, however, that the Labour Tribunals are bound to comply with the statutory provisions at all times.

19. The learned Counsel contended that the phrase 'just and equitable' has not lent itself to precise definition and has been subject to numerous interpretations. However, the learned Counsel draws the attention of the Court to the cases of *Richard Pieris & Co. Ltd v. Wijesiriwardane (1960) 62 NLR 233, Walkers Sons & Co. Ltd v. Fry (1966) 68 NLR 73, Municipal Council of Colombo v. Munasinghe (1969) 71 NLR 233 and Arnold v. Gopalan (1963) 64 NLR 153* to show that the Labour Tribunals are expected to act within the framework of the Industrial Disputes Act and under no circumstances should they be permitted to go beyond the Act.

Written Submissions on Behalf of the Applicants:

20. With regards to the preliminary objection raised by the appellants, the learned Counsel takes the position that,

the appellants have never made any objection as to the maintainability of the application filed by the applicant before the Labour Tribunal, and that it cannot be raised for the first time during the appeal stage.

21. The learned Counsel further brought the attention of the Court towards the case of ***Somawathie v. Wilmon and Others [2010] 1 SLR 128,*** which lays down conditions that need to be satisfied in order for one to raise a new question of law for the first time in appeal. It was stated that,

> "*After a careful examination of the aforementioned decisions, it was clearly decided* in *Gunawardena v. Deraniyagala and others (supra), that according to our procedure a new ground cannot be considered for the first time in appeal, if the said point has not been raised at the trial under the issues so framed. Accordingly the Appellate Court could consider a point raised for the first time in appeal, if the following requirements are fulfilled.*
>
> a. *The question raised for the first time in appeal, is a pure question of law and is not a mixed question of law and fact.*
>
> b. *The question raised for the first time in appeal, is an issue put forward in the Court below, under one of the issues raised, and*
>
> c. *The Court which hears the appeal has before it all the material that is required to decide the question."*

22. The learned Counsel submitted that, as the preliminary objection in respect of the time bar was not raised by the appellants in the Labour Tribunal, the conditions laid

down under (b) and (c) were not met. Therefore, the preliminary objection raised by the appellant in this instance cannot be maintained.

Answering to the Questions of Law:

23. Having heard learned Counsel for both parties at the hearing, and at the perusal of all materials including the petition and the written submissions, I shall now resort to answering the questions of law before this Court.

24. It is the position of the learned Counsel for the appellants that, the applications made by the applicants at the Labour Tribunal, have not been done within the time period stipulated by the Industrial Disputes Act. Therefore, the matter is prescribed by law. The learned Counsel contended that the case should have been dismissed in the first instance. However, this objection was only raised at the appeal stage before the High Court. Therefore, it was argued by the learned Counsel for the applicants that, as the appellants have not raised this objection during trial at the Labour Tribunal, they must be refrained from adducing new questions of law during the appellate stage.

25. Generally, a party is not allowed to raise a new question of law in appeal for the first time. However, through case law precedents, it is settled law that a new question of law could be taken up for the first time in appeal. Nevertheless, it is limited strictly to pure questions of law only, and cannot be a question of mixed law and fact.

26. This issue of whether a new question of law could be raised for the first time during an appeal, was considered

by the Supreme Court in the case of ***Talagala v. Gangodawila Co-Operative Stores Society, Limited*** **[1947] 48 N.L.R. 472** by his Lordship, Dias J. , where he stated that,

> *"Where the question raised for the first time in appeal, however, is a pure question of law, and is not a mixed question of law and fact, it can be dealt with."*

27. In the instant case, the objection taken by the appellant in the High Court is that, the action is time-barred. Admittedly, this objection was not taken up at the trial before the Labour Tribunal. The above objection is not on patent lack of jurisdiction. If the objection is not taken, the Labour Tribunal is entitled to go on with the case and decide the matter on the merits as that has happened in the instant case.

28. In the case of ***Don Aruna Chaminda v. Janashakthi General Insurance Limited*** **SC/Appeal No.134/2018**, **S.C.Minute dated 09.10.2019**, his Lordship, Justice E. A. G. R. Amarasekara held that,

> *"…The said submission is only true with regard to a Patent lack of Jurisdiction. In* ***Baby v Banda (1999) 3 Sri L R 416,*** *it was held that if the want of jurisdiction is patent and not latent, objection can be taken at any time. The case laws and legal texts quoted above in this judgment clearly indicate that when it is latent want of jurisdiction the objection has to be taken at the earliest opportunity*."

29. **Section 39 of the Judicature Act No.2 of 1978** provides,

"Whenever any defendant or accused party shall have pleased in any action, proceeding or matter brought in any Court of First Instance neither party shall afterwards be entitled to object to the jurisdiction of such court, but such court shall be taken and held to have jurisdiction over such action, proceeding or matter:

Provided that where it shall appear in the courts of the proceedings that the action, proceeding or matter was brought in a court having no jurisdiction intentionally and with previous knowledge of the want of jurisdiction of such court, the Judge shall be entitled at his discretion to refuse to proceed further with the same, and to declare the proceedings null and void."

30. In the case of ***Navaratnasingham v. Arumugam and Another*** **[1980] 2 SLR 01 (CA),** his Lordship, Justice Soza held that,

"Further the failure to object to jurisdiction when the matter was being inquired into must be treated as a waiver on the part of the 2nd respondent-petitioner. It is true that jurisdiction cannot be conferred by consent. But where a matter is within the plenary jurisdiction of the Court if no objection is taken, the Court will then have jurisdiction to proceed on with the matter and make a valid order."

31. Further, in the case of ***Don Tilakaratne v. Indra Priyadarshanie Madawala*** **[2011] 2 SLR 280 at 289**, it was held by his Lordship, Justice Sripavan (as he was then) that,

> *"Even on a restrictive interpretation of the section, one can conclude that the petitioner is estopped in law from challenging the jurisdiction of the learned Magistrate. It is evident that the petitioner has conceded the jurisdiction of the Court and his failure to object at the earliest opportunity implies a waiver of any objection to jurisdiction."*

32. In the case of ***Puwakgahakumbure Gedara William Wijesinghe v. Attorney General and Another,*** **SC Appeal No. 109/2017, S.C. Minute dated 28.09.2022**, his Lordship, Justice Thurairaja, PC, stated that,

> *"As per Section 39 of the Judicature Act, any objection must be raised at the earliest possible opportunity and the failure of this amounts to a waiver wherein the court is considered to have jurisdiction over the action. However, it is commonly accepted that in instances where it is a patent lack of jurisdiction, objection to jurisdiction can be taken at any time in proceedings as was held in* ***Baby v Banda (1999) 3 Sri L R 416.***"

33. Further, in the case of ***Rajithi Agencies v. Romav Limited and Another*****, SC/CHC/Appeal/04/2006,**

S.C. Minute dated 03.04.2018, his Lordship, Justice H.N.J.Perera (as he was then) held that,

"…The defendant has failed to formulate a preliminary issue relating to the jurisdiction of the Court at the commencement of the trial. His failure to move Court to try the said issue as a preliminary issue on such a vital matter will amount to a waiver of objections in regard to lack of jurisdiction of Court to hear and determine the defendant's action. The defendant is deemed to have consented and submitted to the jurisdiction of the Court and he cannot be permitted to challenge the jurisdiction. (Rodrigo V. Raymond (2002) (2) S.L.R.78.)"

34. Furthermore, in the case of ***Don Aruna Chaminda v. Janashakthi General Insurance Limited,*** **SC Appeal No.134/2018, S.C. Minute dated 09.10.2019,** his Lordship, Justice E.A.G.R.Amarasekara highlighted on several other authorities including ***Jaladeen v. Rajaratnam*** **[1989] 2 SLR 201**, ***David Appuhamy v. Yassassi Thero*** **[1987] 1 SLR 233** and the case of ***Edmund Perera v. Nimalaratne and Others*** **[2005] 3 SLR 38**, which held that an objection to jurisdiction must be taken at the earliest opportunity and if no objection is taken the matter is said to be within the plenary jurisdiction of the Court and that failure to take such objection was treated as a waiver.

35. In terms of the above case precedents, it is clear that in the instant case the appellants have failed to take up the

objection on the latent lack of jurisdiction and therefore, the learned President of the Labour Tribunal has delivered the Judgment after going through the full trial on its merits.

36. The appellant is deemed to have waived his right to object for the jurisdiction based on the time bar and he is therefore, precluded in taking the objection in the appellate Court. Hence, the first question of law raised under paragraph 7 (i) has to be answered in the negative.

37. I shall now resort to answering the second question of law raised by the appellant under paragraph 7 (iv) of the petition. In the case of ***Asian Hotels & Properties PLC v. Benjamin and 5 Others*** **[2013] 1 SLR 407 at 414 S.C.Minute 03.09.2012,** her Ladyship, former Chief Justice Dr. Shirani A. Bandaranayake stated that,

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

38. The case of ***The Bharat Bank Ltd., Delhi v. The Employees' of the Bharat Bank Ltd., Delhi (A. I.R. 1950 S.C. 188)*** had expressed the role of the Labour Tribunals in very clear terms, which reads as follows:

"...In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with

law. It can confer rights and privileges on either party, which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights or obligations of the parties.

… The Tribunal is not bound by the rigid rules of law…"

39. Further, in the case of ***Daniel v. Rickett, Cockrell and Co.*** **[1938] 2 K.B. 322** it was held that, if the Tribunal or the Arbitrator is given the power to decide a mater justly and equitable, it is undoubtedly given a discretion.

40. It was further held by her Ladyship, Bandaranayake CJ in the case of ***Asian Hotels & Properties PLC v. Benjamin and 5 Others*** **[2013] 1 SLR 407 at 414** that,

"…What is necessary is to grant just and equitable relief and for this purpose it is essential that the principles of natural justice should be followed. This position was clearly, expressed by Tambiah, J. in ***The Ceylon Workers Congress v The Superintendent, Kallebokka Estate (****Supra).*

> *"Although, by subjective standards of an employer, a dismissal may be bona fide and just and equitable, nevertheless when looked at objectively, it may be unjust and inequitable…*
>
> *Whenever a Tribunal is given the power to decide a matter justly and equitably, it is given a discretion (****Daniel v Rickett****). Therefore the Industrial Disputes Act, as amended, gives a discretion to the Labour Tribunal, to*

make Order which may appear just and equitable and such a jurisdiction cannot be whittled away by artificial restrictions.""

41. For the clear reasons stated above, it could be observed that the learned High Court Judge was correct when he stated that the Labour Tribunals are expected to grant "just and equitable reliefs" and that there is no necessity for the Labour Tribunals to follow rigid rules of law. Therefore, the question of law raised under paragraph 7 (iv) of the petition will also be answered in the negative.

42. Hence, for the foregoing reasons, the respective Judgments of the High Court and the orders of the Labour Tribunal are affirmed.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE P. PADMAN SURASENA.

I agree

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA.

I agree

JUDGE OF THE SUPREME COURT