

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

SC Appeal No: 178/2018

SC/HC/LA/39/2018

LT Case No: 24/42/2012

In the matter of an Application for Leave to Appeal in terms of Section 31DD of the Industrial Disputes Act No. 43 of 1950 (as amended) read with Sections 3 and 10 of the High Courts of the Provinces (Special Provisions) Act No. 19 of 1990 from the judgement of the High Court of Gampaha dated 23rd February 2018.

P. Chinthaka Lakdewa De Silva
01/162, Mulatiyana,
Kapugoda.

APPLICANT

-VS-

Linea Aqua (Pvt) Limited
Thanahenpitiya Estate,
Giridara, Kapugoda.

RESPONDENT

AND BETWEEN

Linea Aqua (Pvt) Limited

Thanahenpitiya Estate,
Giridara, Kapugoda.

RESPONDENT-APPELLANT

-VS-

P. Chinthaka Lakdewa De Silva
01/162, Mulatiyana,
Kapugoda

APPLICANT-RESPONDENT

AND NOW BETWEEN

Linea Aqua (Pvt) Limited
Thanahenpitiya Estate,
Giridara, Kapugoda..

**RESPONDENT-APPELLANT-
PETITIONER**

-VS-

P. Chinthaka Lakdewa De Silva
01/162, Mulatiyana,
Kapugoda

**APPLICANT-RESPONDENT-
RESPONDENT**

**BEFORE : PRIYANTHA JAYAWARDENA, PC, J.
L.T.B. DEHIDENIYA, J.
S. THURAIRAJA, PC, J.**

COUNSEL : J.C Thambiah with Dilan de Silva instructed by Sanoja Sarathchandra for the Respondent – Appellant – Appellant Applicant – Respondent – Respondent is absent and unrepresented.

ARGUED ON : 5th July 2019.

WRITTEN SUBMISSIONS : Respondent- Appellant-Petitioner on 3rd of May 2019

DECIDED ON : 13th November 2019.

S. THURAIRAJA, PC, J.

The employee Applicant – Respondent – Respondent (hereinafter referred to as the Employee) is absent and unrepresented. We peruse the journal entry and find that there were notices issued on several occasions, including to his instructing attorney. All the notices were returned without being served on the Employee. When the case was taken up in open court, his name was called but he was absent and unrepresented.

The Counsel for the Respondent – Appellant – Petitioner (hereinafter referred to as the Employer) commenced his submissions and submitted to the court that he had obtained leave under paragraph 19 grounds (g) and (h) but, he will be confining himself to only one question of law stipulated in Paragraph 19 (g) of the Petition. The said question of law is reproduced for easy reference

(g) Has the Learned High Court Judge arrived at his conclusions by presuming the Petitioner to be guilty of failing to follow the statutory provisions under the Industrial Disputes Act pertaining to the deposit of the Applicant’s twelve month salary, without considering the evidence?

(Sic eret scriptum)

I find it pertinent to establish the facts of the case prior to addressing the issues before us. The Employee was employed as an inline Quality Controller at Linea Aqua (Pvt) Limited who was the Employer. It is alleged that the employee had submitted certain bogus claims and obtained funds from the insurance scheme with Union assurance, where the employees are paid up to Rs 15, 000/- annually for the purchase of spectacles. The workers are reimbursed the money spent, by the aforementioned insurance company. The employer stated that the employee had fraudulently obtained a sum of Rs 15, 000/- by presenting a false prescription and receipt. A domestic inquiry was held and he was found guilty and his services were terminated.

Being aggrieved with the aforesaid decision the Employee, filed an application at the Labour Tribunal of Gampaha. After an inquiry, the President of the Labour Tribunal ordered reinstatement of the Employee without back wages and the reinstatement should have taken effect from the 5th of September 2016.

The Employer submits that he had appealed against the said order to the Provincial High Court of Gampaha on the 2nd of September 2016. The matter was then taken up by the High Court. Learned High Court Judge on the 23rd of February 2018 decided that the Employer had not complied with Section 31 of the Industrial Disputes Act by not depositing the money equivalent to one year's salary of the Employee. Accordingly he accepted the preliminary objection and dismissed the appeal.

In **Wimalasiri Perera and Others V. Lakmali Enterprises Diesel and Petrol Motor Engineers and Others [(2003) SLR Vol 1 page 62]**, the Labour Tribunal had awarded compensation to the Applicants-Respondents-Appellants. The Employers-Appellants-Respondents appealed to the High Court but failed to deposit security in terms of section 31 D (4). In the said appeal to the Supreme Court, an objection was taken up on behalf of the Applicants that the appeal could not be proceeded with since security had not been deposited. The Employers did not deposit security even then, nor did they tender any evidence as to the reason for that default. As per Fernando, J,

“The deposit of security was mandatory; and the High Court erred in holding that the unexplained failure to deposit security did not justify the rejection of the appeal.”

The Counsel for the Employer submits to the court that the aforementioned order cannot be accepted. The Counsel further submits that he had complied with the provision of the Industrial Disputes Act and therefore the High court judge erred in law by not considering the evidence in the appeal.

I perused the brief before us. P10 which is a letter obtained for money deposited at the Labour Tribunal of Gampaha, submitted by the Counsel is a motion dated 6th September 2016 which carries neither endorsement nor rubberstamp of the High Court. Further I could not find any corresponding entries in the journal entry. When inquired, Counsel couldn't submit any material to show that this motion and the attached document were before the High Court of Gampaha, at the relevant time.

The Counsel for the employer draws our attention to a document marked P11, which is a letter stating that the Employer – Appellant had deposited money equivalent to two years salary which was signed by the Labour Tribunal and the President of the Labour Tribunal. This motion was filed on the 16th of March 2018. When perusing, I find that there is a date stamp of the High Court of Gampaha dated 16th March 2018.

If P10 was filed on the 6th of September 2016, I don't see any reason for the Counsel for the Employer to file the same document through another motion, after the delivery of the judgement at the High Court. I do not see that there is any evidence to show that the said P10 was before the judge of the High Court at the time when he delivered the judgement. Therefore, it is not possible to act on P10 and P11. The Appeal was filed on the 2nd of September 2016. This shows that at the time of filing the appeal, the Employer had not complied with the provisions of the Industrial Disputes Act.

Considering the question of Law, I find that the learned High Court judge had considered the provisions of the Industrial Dispute Act and delivered the judgement. Consequently I am not inclined to disturb the said findings.

Accordingly I dismiss the appeal, with cost and I fix the cost at Rs. 10, 000/-.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT