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

NGA Wijenayake
No. 4B, 57L
Raddolugama.

Applicant

SC Appeal88/2010
SC HC L.A No.11/2009
HC.ALT.No.16/2008
LT Case No.2/326/2002

Vs

International Construction Consortium Ltd
Bernards Building,
First Floor, No.106/4,
Kohuwala,
Dehiwala

Presently at
No.70,
S. de.SJayasinghaMawatha,
Kohuwala,
Dehiwala

Respondent

AND BETWEEN

NGA Wijenayake
No. 4B, 57L
Raddolugama.

Applicant-Appellant

Vs

International Construction Consortium Ltd
Bernards Building,
First Floor, No.106/4,
Kohuwala,
Dehiwala

Presently at
No.70,
S. de.SJayasinghaMawatha,
Kohuwala,
Dehiwala

Respondent-Respondent

AND NOW BETWEEN

NGA Wijenayake
No. 4B, 57L
Raddolugama.

Applicant-Appellant-Petitioner-Appellant

Vs

International Construction Consortium Ltd
Bernards Building,
First Floor, No.106/4,
Kohuwala,
Dehiwala

Presently at
No.70,
S. de.SJayasinghaMawatha,
Kohuwala,
Dehiwala

Respondent-Respondent-Respondent-Respondent

Before : Sisira J De Abrew J
UpalyAbeyratne J
KT Chitrasiri J

Counsel : MohamadAdamaly with J Abeysundera for the
Applicant-Appellant-Petitioner-Appellant
Manohara de Silva P C with J Abeysundera for the
Respondent-Respondent-Respondent-Respondent

Argued on : 18.1.2017

Written submission
tendered on : 8.10.2010 by the Applicant-Appellant-Appellant
10.11.2010 by the Respondent-Respondent-Respondent

Decided on : 1.3.2017

Sisira J De Abrew J.

The Applicant-Appellant-Petitioner-Appellant (hereinafter referred to as the Applicant-Appellant) filed an application in the Labour Tribunal alleging that his services were unjustifiably and wrongfully terminated by the Respondent-Respondent-Respondent-Respondent (hereinafter referred to as the Respondent-Respondent). The learned President of the Labour Tribunal, after inquiry, ordered compensation in a sum of Rs.648,000/- being the two years salary of the Applicant-Appellant. Being aggrieved by the said order of the Labour Tribunal, the Applicant-Appellant appealed to the High Court. The learned High Court Judge by his order dated 2.4.2009, reduced the said amount to 12 months salary. Being aggrieved by the said judgment of the High Court, the Applicant-Appellant has appealed to this court. This Court by its order dated 30.8.2010, granted leave to appeal on the questions of law set out in paragraph 11(i) and11(iii) of the petition of appeal dated 14.10.2009 which are set out below.

1. Has the learned High Court Judge erred in law in reducing the quantum of compensation awarded by the learned President of the Labour Tribunal in circumstances where the Respondent had not preferred any Appeal?

2. Has the learned High Court judge erred in law in purporting to grant relief that has not been prayed for in the pleadings?

This court by the said order allowed the following question of law raised by learned counsel for the Respondent-Respondent.

"When the Appellant invokes the jurisdiction of the High Court under Section 31D of the Industrial Disputes Act from an order of the Labour Tribunal under the provisions of the Industrial Disputes Act as amended by Act No. 32 of 1990, whether the power of the High Court is restricted to the relief sought by the Appellant or whether it (the order of the Labour Tribunal) can be affirmed, varied or reversed."

Learned counsel for the Applicant-Appellant submitted that orders ofthe Labour Tribunal are based on the principle of just and equitable and as such the High Court Judge is also required to observe the same principle when hearing appeals from the orders ofthe Labour Tribunal. Learned counsel contended that the learned High Court Judge had not observed the said principle when he reduced the quantum of damages ordered by the Labour Tribunal. I now advert to this contention. Although learned counsel contended so, the learned High Court Judge, in her judgment, has observed that the order of the Labour Tribunal was not a reasonable one for both parties and that the order of the Labour Tribunal was not a just and equitable order. It has to be noted here that when the Applicant-Appellant joined the Respondent-Respondent he was 53 years old and worked in the

company of the Respondent-Respondent only for four (4) years. The learned High Court Judge, in her order, further made the following observations.

1. The Applicant-Appellant had worked at several places for short periods
2. The Applicant-Appellant is a person who has the ability to find a job easily irrespective of his age.
3. The Applicant-Appellant had given his services to the Respondent-Respondent only for a period of 4 years and as such he had not given his services to the Respondent-Respondent for a long period.
4. The Applicant-Appellant has joined the Respondent-Respondent only at the age of 53.
5. The learned President of the Labour Tribunal had not considered the facts which were in favour of the Respondent-Respondent when granting compensation and that therefore the order of the learned President of the Labour Tribunal could not be considered as a just and equitable order.

The learnedHigh Court Judge after considering the facts in favour of both parties decided that compensation of 12 months salary would be just and equitable.

When I consider the above facts, I hold that thelearned High Court Judge has considered the principle of 'just and equitable' when she made the above order. I therefore reject the above contention of learned counsel for the Applicant-Appellant.

Learned Counsel for the Applicant-Appellant next contended that the learned High Court Judge had erred in law when she reduced the compensation awarded by the learned President of the Labour Tribunal. He further submitted that the learned High Court Judge when considering an appeal filed by an employee could not reduce compensation awarded by the learned President of the Labour

Tribunal especially when there is no appeal by the employer. To support this contention, learned counsel cited Brohier Vs Munidasa 73 NLR 17 wherein Sirimana J held as follows.

> *"Under Section 31C of the Industrial Disputes Act, a Labour Tribunal must make its order on the evidence led and must not go beyond the evidence. Accordingly, where a workman states in his evidence that his application is for salary for a certain number of months for wrongful dismissal, there is no justification for the tribunal to order the employer to pay salary for a certain period of loss of career."*

The contention of learned counsel for the Applicant-Appellant in the present case is that the reduction of compensation by the learned High Court Judge is wrong. When I consider the said contention and the principle laid down in the above judicial decision, I am of the opinion that the said judicial decision does not support his contention.

Learned counsel for the Applicant-Appellant relied on the following judicial decision.Upali Management Services Ltd Vs Ponnambalam [2004] 1SLR 331. The Supreme Court in the above case observed the following facts.

> *"The High Court upheld the order of the Tribunal disallowing only the petrol allowance and entertainment allowance. The High Court reduced the compensation to Rs.4,243,378.00."*

The Supreme Court held:

1. *"In terms of Section 31B(4) of the Industrial Disputes Act (The Act) the Labour Tribunal had the power to grant equitable relief against harsh terms*

imposed by the employer and the Labour Tribunal had the power to make just and equitable orders. It does not have the freedom of wild ass."

2. *The order of the Tribunal regarding compensation was perverse.*
3. *There was no constructive termination of the workman's service by the employer."*

Learned counsel for the Applicant-Appellant further relied on the following passage at page 338 of the above judgment.

> *"In terms of the provisions of the Industrial Disputes Act where Section 31(C) provides the Tribunal to make 'such order as may appear to the Tribunal to be just and equitable' admittedly a Labour Tribunal has very wide powers. However it is to be noted that the Tribunal does not possess an unfettered authority. As observed by H.N.G. Fernando J (as he then was) in Walker Sons &Co.LtdVs Fry 68 NLR 73, Labour Tribunal does not have the 'freedom of wild ass'."* In my view, the judgment in the above case too does not support the contention of learned counsel for the Applicant-Appellant.

The main question that must be considered in this case is whether the High Court in the exercise of its appellate jurisdiction has the power, in an appeal filed by the workman, to reduce compensation when there is no appeal by the employer. Learned counsel for the Applicant-Appellant contended that the High Court could not do so when there was no appeal by the employer. He further submitted that all what High Court could do was either to enhance the compensation as sought bythe Applicant-Appellant or to dismiss the appeal. I now advert to this contention. If the contention of learned counsel for the Applicant-Appellant is correct, then it is possible to contend that the Applicant-Appellant can impose conditions on the High Court Judge when he considers an appeal of the Applicant-Appellant. Can an

Applicant-Appellant impose such conditions on the High Court Judge when he exercises appellate jurisdiction in a case filed by the Applicant-Appellant? In considering this question I would like to consider Section 31D(3) of the Industrial Disputes Act which reads as follows:

> *"Where the workman who, or the trade union which, makes an application to a Labour Tribunal, or the employer to whom that application relates is dissatisfied with the order of the tribunal on that application , such workman, trade union or employer may, by written petition in which the other party is mentioned as the respondent, appeal from that order on a question of law, to the High Court established under Article 154P of the Constitution, for the Province within which such labour tribunal is situated."*

Section 6(a) of High Court of the Provinces (Special Provinces) Act No. 19 of 1990 reads as follows.

> *"A High Court established by Article 154P of the Constitution may in the exercise of any appellate jurisdiction vested in it by the Constitution or section 3 or any other law, affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or may give directions to any Court of First Instance, or tribunal or institution or order a new trial or further hearing upon such terms as the court may think fit."*

According to Section 6(a) of High Court of the Provinces (Special Provinces) Act No. 19 of 1990, the High Court in the exercise of its appellate powers has the power to affirm, reverse, correct or modify any order or judgment of the Labour Tribunal.This section does not contemplate on a separate procedure when the High Court considers an appeal filed by a workman or a trade union. When I consider all

the above matters, I hold that no party can impose conditions on the High Court when it exercises its appellate jurisdiction and the said power given to the High Court cannot be curtailed by the parties to the case.

When I consider the above legal literature, I hold that when the High Court in the exercise of its appellate jurisdiction considers an appeal filed against an order or judgment of Labour Tribunal, it has the power to affirm, reverse, correct or modify an order or the judgment of Labour Tribunal. I further hold that the High Court in the exercise of its appellate powers has the right to reduce compensation awarded by the Labour Tribunal when it considers an appeal filed by a workman or trade union although there is no appeal by his employer and that the High Court also has the power to enhance the compensation awarded by the Labour Tribunal when it considers an appeal filed by the employer although there is no appeal by the workman or the trade union.

The 1st and 2nd questions of law are reproduced below.

1. Has the learned High Court Judge erred in law in reducing the quantum of compensation awarded by the learned President of the Labour Tribunal in circumstances where the Respondent had not preferred any Appeal?
2. Has the learned High Court judge erred in law in purporting to grant relief that has not been prayed for in the pleadings?

In view of the conclusion reached above, I answer the above questions of law in the negative.

I reproduce below the question of law raised by the Respondent-Respondent.

“When the Appellant invokes the jurisdiction of the High Court under Section 31D of the Industrial Disputes Act from an order of the Labour Tribunal under the

provisions of the Industrial Disputes Act as amended by Act No 32 of 1990, whether the power of the High Court is restricted to the relief sought by the Appellant or whether it (the order of the Labour Tribunal) can be affirmed, varied or reversed."

Considering the aforementioned matters, I answer the above question of law as follows. When the Appellant invokes the jurisdiction of the High Court under Section 31D of the Industrial Disputes Act from an orderof the Labour Tribunal, the power of the High Court is not restricted to the relief sought by the Appellant and the High Court has the power to affirm, very and reserve the order of the Labour Tribunal.

For the above reasons, I affirm the judgment of the High Court and dismiss the appeal of the Applicant-Appellant. However having considered the facts of this case, I do not make an order for costs.

Appeal dismissed.

Judge of the Supreme Court.

UpalyAbeyratne J

I agree.

Judge of the Supreme Court.

KT Chitrasiri J

I agree.

Judge of the Supreme Court.