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

In the matter of an Appeal from the judgement of the Provincial High Court of Civil Appeal of the Western Province (Holden in Colombo), dated 06.09.2022, in case Revision No. HCRA/25/2022, made under and in terms of the Industrial Disputes Act No. 43 of 1950 (as amended), read together with the High Court of Provinces (Special Provisions) Act No. 19 of 1990.

SC Appeal No. 30/ 2023

SC/HC/LA/93/2022

HC RA No. 25/2022

LT Wattala No. 31/04/2021

L.S.I. Fernando
No. 247, Kamaragoda,
Devalapola.

APPLICANT

Vs.

Jinasena (Pvt) Ltd.
Factory,
No. 09, Gampaha Road,
Ekala, Ja-Ela.

RESPONDENT

AND BETWEEN

Jinasena (Pvt) Ltd.
Factory,
No. 09, Gampaha Road,
Ekala, Ja-Ela.

RESPONDENT- PETITIONER

Vs.

L.S.I. Fernando
No. 247, Kamaragoda,
Devalapola.

APPLICANT- RESPONDENT

AND NOW BETWEEN

Jinasena (Pvt) Ltd.
Factory,
No. 09, Gampaha Road,
Ekala, Ja-Ela.

RESPONDENT- PETITIONER-APPELLANT

Vs.

L.S.I. Fernando
No. 247, Kamaragoda,
Devalapola.

APPLICANT- RESPONDENT-RESPONDENT

Before: Yasantha Kodagoda, PC. J.

Janak De Silva J.

Sobhitha Rajakaruna J.

Counsel: Shamir Zavahir with Minul Muhandiramge for the Respondent- Petitioner-Appellant.

Ashan Fernando for the Applicant- Respondent- Respondent.

Argued on: 27.01.2025

Decided on: 03.07.2025

Sobhitha Rajakaruna J.

The Applicant-Respondent-Respondent (Employee) filed an Application in the Labour Tribunal of Wattala alleging that the Respondent-Petitioner-Appellant (Employer) terminated his services unjustly and unfairly. The Employer raised a preliminary objection under Section 31B (3)[1] of the Industrial Disputes Act No. 43 of 1950 on the suspension of proceedings before the Labour Tribunal of Wattala. The learned President of the Labour Tribunal on a day (i.e. 22.10.2021) where the Employer was not present before the Tribunal overruled the objection. The Respondent-Petitioner-Appellant lodged a revision application under Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, against the said order of the Labour Tribunal, in the High Court of the Western Province holden in Colombo. The said matter was taken up in High Court No.8 of Colombo.

The learned Judge of the High Court, during the pendency of the said revision application, citing the jurisdiction of the said High Court of Colombo, has refused to extend an interim order issued previously by him in reference to the objections raised by the Respondent-Petitioner- Appellant under the said Section 31B (3). This Court, in view of the Application filed by the Respondent-Petitioner-Appellant against the said order of the High Court, granted Leave to Appeal on the following question:

[1] Section 31B (3); Where an application under subsection (1) relates -

> (a) to any matter which, in the opinion of the tribunal, is similar to or identical with a matter constituting or included in an industrial dispute to which the employer to whom that application relates is a party and into which an inquiry under this Act is held, or
>
> (b) to any matter the facts affecting which are, in the opinion of the tribunal, facts affecting any proceedings under any other law, the tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the tribunal shall resume the proceedings upon that application and shall in making an order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law.

> ‘Did the learned High Court Judge err by coming to the conclusion that the Provincial High Court of Civil Appeal of the Western Province (holden in Colombo) did not have jurisdiction to hear and determine the said revision Application from an order of the Labour Tribunal of Wattala?’

The Legislature by way of the said Act No. 19 of 1990, inter alia, made provisions in reference to the procedure for exercise of the original criminal jurisdiction of the High Court and the jurisdiction/procedure to appeal to, and from the High Court established under the said Article 154P of the Constitution. In term of Section 3 of the said Act No. 19 of 1990, a High Court established by Article 154P for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under Section 5 or Section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province.

It is noted that currently more than one High Court is exercising appellate and revisionary jurisdiction in a given province of Sri Lanka. For instance, the Western Province has such High Courts in Colombo, Mount Lavinia, Homagama, Avissawella, Gampaha, Negombo, and Kalutara. Primarily, the question that needs to be resolved in the instant case is whether a party aggrieved by an order made by a Labour Tribunal situated within the Western Province has the option to select among the High Courts (Colombo, Mount Lavinia, Homagama, Avissawella, Gampaha, Negombo, Kalutara) located within the Western Province to lodge his/her appeal or revision application.

A High Court established by Article 154P of the Constitution for a Province has also been conferred with appellate and revisionary jurisdiction, in terms of Section 5A(1) of the said Act No. 19 of 1990 (as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006), in respect of judgements, decrees and orders delivered and made by any District Court, Family Court or a Small Claims Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court, Family Court or a Small Claims Court, as the case may be. Such High Courts exercise appellate and revisionary jurisdiction in respect of judgements, decrees and orders delivered and made by any District Court etc., are casually referred to as the ‘Civil Appellate High Courts’. Thus, a similar question as mentioned above

may arise whether any party aggrieved by a judgement, decree, or order made by any District Court, etc. also has the option to select among such High Courts to lodge an appeal or revision application.

On the other hand, Section 2(1) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 provides that every High Court established by Article 154P of the Constitution for a Province shall have exclusive jurisdiction and shall have cognizance of and full power to hear and determine, in the manner provided for by written law, all actions, applications and proceedings specified in the First Schedule (arising out of commercial transactions) to the said Act and the matters set out in its Second Schedule including the relevant proceedings under the Companies Act and Intellectual Property Act. The High Court which exercises the above jurisdiction is casually called the 'Commercial High Court'. However, no reference to the term 'Commercial High Court' or 'Civil Appellate High Court' has been made either in the said Act No. 10 of 1996 and Act No. 19 of 1990 respectively.

The said Act No. 10 of 1996, has made provisions to identify the territorial jurisdiction of the High Court within the province based on (a) the place of residence; (b) the cause of action arising; (c) the registered office of the respective Companies; and (d) the place of making the contract sought to be enforced. Anyhow, where an Order under Section 2(1) of the said Act No. 10 of 1996 is made by the Minister in respect of a High Court, the jurisdiction under the said Section 2(1) shall be exercised by that High Court sitting in Colombo or any other place as may be designated by the Minister by Order published in the Gazette with the concurrence of the Chief Justice. Notwithstanding the provisions in the said Act No. 19 of 1990 and Act No. 10 of 1996, no specific and detailed arrangements regarding territorial jurisdiction have been made in Article 154P, although the Chief Justice is empowered under Article 154P (2) to nominate several Judges as may be necessary to each High Court of the Province.

The contention of the Respondent-Petitioner-Appellant who relies on the judgement of ***Kaluthanthrige Dona Jayaseeli v. Kaluthanthirige Dona Dayawathi- SC Appeal No. 29/2016 SC Minutes of 28.02.2019*** is that the Labour Tribunal of Wattala falls within the Western Province and as such the High Court of the Western Province (holden in Colombo) has jurisdiction to hear its revision applications. The Supreme Court in the said judgement of ***Kaluthanthrige Dona Jayaseeli*** took the view that any High Court established in a Province, has jurisdiction

under Section 5A (1) of the said Act No.19 of 1990 to hear appeals and revision applications in respect of judgements and orders delivered by any District Court or Family Court etc. within the boundaries of the respective Province. Accordingly, the Court held that the High Court of the Western Province holden in Colombo has jurisdiction to hear appeals and revision applications arising from the judgements and decrees delivered by the District Court of Homagama, as the District Court of Homagama is situated within the Western Province. The reasons for the said decision in the case of ***Kaluthanthrige Dona Jayaseeli*** is solely based on the phrase "within such Province" stipulated in the said Section 5A (1).

However, in a recent development involving, inter alia, a similar question, to that of the instant Application, His Lordship Justice Mahinda Samayawardhena with the concurrence of Her Ladyship the Chief Justice Murdu N. B. Fernando, PC and their Lordships Justice E.A.G.R. Amarasekara, Justice Arjuna Obeyesekere and Justice Priyantha Fernando in the ***JMC Jayasekara Management Centre (Pvt) Limited v. Commissioner General of Inland Revenue- SC Appeal No. 5/2021 SC Minutes of 05.03.2025*** held that the broad interpretation suggested in the said case of ***Kaluthanthrige Dona Jayaseeli*** need not be followed as it has already been misused by some Attorneys. The Supreme Court observed that:

> *"In Jayaseeli v. Dayawathi (SC/APPEAL/29/2016, SC Minutes of 28.02.2019), the revision application filed against an order of the District Court of Homagama in the Provincial High Court of Civil Appeal in Colombo was refused on the ground that the District Court of Homagama falls within the High Court Zone of Avissawella, and thus the application should have been filed in the High Court of Civil Appeal in Avissawella. The Supreme Court, however, set aside this decision, stating that the High Court of Civil Appeal in Colombo, established under section 5A(1) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, has jurisdiction to hear appeals from judgments of the District Court of Homagama, as it is situated within the Western Province. Although this interpretation is technically correct, I must hasten to add that the attention of that Bench had not been drawn to: (a) the grave danger of this interpretation being misused for "judge shopping" or "forum shopping" to select favourable judges, which must be stopped at any cost; (b) the fact that appointment letters issued by the Chief Justice do not authorise a High Court Judge to exercise criminal and civil jurisdiction throughout the Province; (c) the inconvenience such a liberal interpretation causes to certain parties to the*

action due to the distance they have to travel; and (d) the administrative issues arising from such an interpretation, including the unequal distribution of cases among High Courts in the Province. As this decision is already being misused by some Attorneys, the broad interpretation suggested in Jayaseeli v. Dayawathi need not be followed."

The said five judge bench of the Supreme Court observed that although the interpretation in ***Kaluthanthrige Dona Jayaseeli*** is technically correct, the broad interpretation given therein risks enabling "judge shopping" or "forum shopping" and ignores the limited jurisdictional scope of High Court judges' appointment letters. Furthermore, the Supreme Court highlights the inconvenience caused to parties due to travel distances and administrative challenges like uneven case distribution.

'Forum Shopping' or 'Bench Hunting' describes the tactic where litigants deliberately choose, unfairly, unethically and unreasonably, a specific court or jurisdiction they believe will offer the most advantageous outcome for their case. This practice can take place within one legal system or across multiple jurisdictions. Therefore, 'forum shopping' (or 'bench hunting') can be considered a manipulative strategy used to influence court decisions, compromising the integrity of the judicial process. By exploiting weaknesses in the legal system, such actions erode public confidence and disrupt the equitable distribution of justice. Such tactics are often employed not only by litigants but also by legal practitioners, who, as officers of court, bear a duty and responsibility to uphold justice.

Sometimes, complaints are made about employing such practices in collusion with judges. The following observations made by His Lordship Justice P. Padman Surasena in the case of ***Bulugaha Pathirannehelage Sarith Maheeputhra Pathirathne vs. Hon. Mahinda Yapa Abeywardena, Chairman of the Constitutional Council and Others SC/FR/35/2024 SC Minutes of 12.12.2024*** are vital:

"Having considered the afore-stated sequence of events in light of the contents of the written submissions filed on behalf of the Hon. Attorney General in CA (Writ) 377/2023, I can at once state that the practice referred to in that sequence of events whether it amounts to, or known as, Bench Fixing or Bench Hunting or any other, irrespective of the person responsible for it, be it a Petitioner or a Counsel or an Instructing Attorney or a Judge, would undoubtedly be a practice

which must be condemned in no uncertain terms and immediately stopped. There is no doubt that any balanced and smooth system of administration of justice, any court system, any legal regime must immediately take steps to arrest such situations. However, in the case of the Writ Applications bearing Nos. CA (Writ) 308/2023 and CA (Writ) 377/2023, it appears to me that whoever who had successfully engaged in that practice was allowed to do so solely because of the inaction of the Court."

It is essential to curb practices such as 'forum shopping' or 'bench hunting', which result in abuse of process of court, by adopting measures like enforcing stringent jurisdictional regulations and ensuring transparency. When you take the Southern Province as an example, five High Courts within the same province exercise appellate and revisionary jurisdiction. Those High Courts are in Balapitiya, Galle, Matara, Tangalle and Hambantota. Adopting the rationale described in ***Kaluthanthrige Dona Jayaseeli*** would allow a litigant who is dissatisfied with an order or judgement delivered in a particular court in Balapitiya (in the administrative district of Galle) to lodge an appeal even in the High Court of Hambantota (in the administrative district of Hambantota). The road distance from Balapitiya to Hambantota is approximately 168 km.

Due to extensive reading on conceptual developments in foreign jurisdictions, I must draw my attention to the concept of '*forum non conveniens'*. As per the Judgement of the Grand Chamber of the European Court of Justice in ***Andrew Owusu v. N. B. Jackson Case C- 281/02***, it is observed that; 'according to the doctrine of forum non conveniens, as understood in English law, a national court may decline to exercise jurisdiction on the ground that a court in another State, which also has jurisdiction, would objectively be a more appropriate forum for the trial of the action, that is to say, a forum in which the case may be tried more suitably for the interests of all the parties and the ends of justice (1986 judgment of the House of Lords, in ***Spiliada Maritime Corporation ν Cansulex Ltd [1987], AC 460***, particularly at p. 476). An English court which decides to decline jurisdiction under the doctrine of forum non conveniens stays proceedings so that the proceedings which are thus provisionally suspended can be resumed should it prove, in particular, that the foreign forum has no jurisdiction to hear the case or that the claimant has no access to effective justice in that forum.'

Despite the said legal concept primarily dealing with a cross-border element (i.e. different countries), the fundamentals of the principle may be relevant to the issue at hand. Hence, if a decision of the Labour Tribunal of Wattala is to be appealed, all of the Provincial High Courts of the Western Province technically may have jurisdiction to hear and determine the appeal. However, such would be of immense inconvenience to parties. It is noted that new applications to the Labour Tribunal are being filed concerning the area where the alleged termination took place, based on the circulars issued by the Judicial Service Commission.

Similarly, this certainly aligns with the segments pointed out by the Supreme Court in the case of ***JMC Jayasekara Management Centre (Pvt) Limited,*** causing unethical practice of 'forum shopping'/'bench hunting', inconveniences to parties and issues due to unequal distribution of work among the High courts within the province. Likewise, one may query, referring to the letter of appointment, whether the Judge of the High Court of Hambantota is authorised to deal with an appeal from a judgement of a court of first instance in Balapitiya.

Based on the reasons given above and also considering that the issues on 'forum shopping'/ 'bench hunting' and 'forum non conveniens' were not addressed in the case of ***Kaluthanthrige Dona Jayaseeli,*** I am not inclined to follow the dicta of the said judgement. It is no doubt that the literal interpretation of Sections 3 and 5A (1) of the said Act No. 19 of 1990 suggests that a High Court established under Article 154P of the Constitution has appellate and revisionary jurisdiction in respect of orders and judgements delivered by any court of first instance within the province in which the respective High Court is situated, solely based on the phrase "within the province" stipulated in the above Sections. However, I hold that adapting a liberal or broader interpretation that allows parties to select a Court of their choice to lodge an appeal or revision may lead to highly unethical and unreasonable issues as described above.

It is observed that the learned Counsel for both parties acknowledged during the hearing of the instant Application that no specific regulations have been promulgated to govern the territorial jurisdiction of Provincial High Courts, particularly in determining appeals or revision applications among the High Courts within a single province. However, I need to explore whether any rules or regulations are currently in effect that determine the appellate and revisionary jurisdiction of the High Court within a specific Province.

In arriving at the preceding conclusion, I have drawn my attention even to the phrases- "subject to any law" and "written law" outlined in those Sections 3 and 5A (1) respectively. Section 3 of the said Act No. 19 of 1990 specifically provides that the respective High Court shall exercise its jurisdiction as provided therein, 'subject to any law', to hear Appeals from Labour Tribunals and Orders under the Agrarian Services Act. It is noted that Section 5A was inserted immediately after Section 5 of Act No. 19 of 1990 by the amendment made by virtue of the aforesaid Act No. 54 of 2006. Section 5 of the said principal enactment (Act No. 19 of 1990) which describes the procedure for appealing to the High Court stipulates that the 'written law' applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, *mutatis mutandis*, apply to appeals and revisions to the High Court established by Article 154P of the Constitution from convictions, sentences or orders made by such courts, including the Labour Tribunals within that province.

Similarly, in terms of Article 154P(3)(c) of the Constitution, a High Court designated under Article 154P (1) shall have the power to exercise such other jurisdiction and powers [other than the jurisdiction specified in Article 154P(3)(a) and (b)] as Parliament may, 'by law', provide. Article 154P (3) (a) and (b) deal with the Criminal jurisdiction and appellate/ revisionary jurisdiction in respect of convictions, sentences and orders imposed by the Magistrate's Courts/ Primary Courts within the province. The said High Court, pursuant to Article 154P (3) (a) and (b) should also exercise its jurisdiction 'according to law' and 'subject to any law' respectively.

In addition to the above, the relevant provisions of the Judicature Act No. 2 of 1978 should also be considered. There is no doubt that the said Judicature Act was enacted to establish and structure a system of courts of first instance. As per its Preamble, the Act aims to delineate the jurisdiction of these courts, regulate their procedures, and address matters related to or incidental to those objectives. It is noted that the Judicature (Amendment) Act No. 34 of 2022 has introduced several amendments to the said Judicature Act. Accordingly, Section 2 of the principal enactment has been repealed and the following new Section has been substituted.

> "The Courts of First Instance for the administration of justice in the Republic of Sri Lanka shall be- (a) the High Court of the Republic of Sri Lanka; (b) the High Courts for the Provinces established by Article 154P of the Constitution; (c) the District Courts; (d) the Family Courts; (e) the Small Claims Courts; (f) the Magistrates' Courts; and (g) the Primary Courts."

Thus, the Legislature in the year 2022 has clearly distinguished the High Court of the Republic of Sri Lanka and the High Courts for the Provinces established by Article 154P of the Constitution. Such distinction implies that the provisions of the Judicature Act applicable to High Courts, when functioning as courts of first instance, remain unaffected. It seems that the jurisdiction conferred by the said Act No. 19 of 1990 to the High Courts, which are established under Article 154P, primarily pertains to their appellate and revisionary roles whereas the said Act No. 10 of 1996 assigns jurisdiction to hear and determine certain civil actions and matters, predominantly those of a commercial nature.

In terms of Section 17 of the said Judicature Act, the High Court, that is referred to in the said Act, may, subject to the provisions of the Act, exercise its jurisdiction within any of the judicial zones specified and in existence under the provisions of Section 3. The Chief Justice may from time to time nominate and assign by writing under his hand a Judge of the High Court to exercise such jurisdiction of the High Court at sittings in the zone, as specified in such writing. Section 3 of the said Judicature Act reads:

> "For the purpose of the administration of justice Sri Lanka shall be divided into judicial zones, Judicial districts and Judicial divisions within such territorial limits as may in consultation with the Chief Justice and the President of the Court of Appeal from time to time be determined by the Minister by Order published in the Gazette"

The relevant Minister by virtue of the powers vested in him by Section 3 of the said Judicature Act, in consultation with the Chief Justice and the President of the Court of Appeal, published an order in the Gazette Extraordinary No. 1679/40 dated 10.11.2010. By such order (as amended), the Minister, inter alia, determined that Sri Lanka shall be divided into Judicial Zones, Judicial Districts and Judicial Divisions as prescribed in the said order. According to Section 4(a) of the said Judicature Act, the High Court of the Republic shall be a Court of

record and shall consist of a certain number of judges mentioned therein each of whom shall be known as a 'Judge of the High Court'. Article 111 of the Constitution declares that the President appoints the Judges of the High Court. Hence, it is observed that only 'Judges of the High Court' are appointed and not 'Judges of the Provincial High Court'.

Regardless of all the provisions cited above, it is apparent that no rules or regulations exist defining the territorial jurisdiction of High Courts established under Article 154P in order to assign appellate and revisionary work systematically among such Courts situated within a particular Province. I am aware that currently in Sri Lanka for administrative convenience, no distinction is maintained among several High Courts in a single station when allocating work. Even the impugned order has been issued by High Court No. 8 of Colombo despite the caption of the respective Petition of the Respondent- Petitioner-Appellant referring to "the High Court of Western Province holden in Colombo- exercising Civil Appellate jurisdiction". Considering the lack of clear guidelines, I take the view that the criteria outlined in the orders made under Section 3 of the said Judicature Act, by which Sri Lanka has been divided into Judicial Zones, Judicial Districts and Judicial Divisions can be followed with necessary alterations, although such orders are concerning the High Courts (when functioning as a court of first instance) that are identified in Section 2(a) of the said Judicature Act. This arrangement may be maintained until policymakers establish and implement suitable rules and regulations.

For the reasons given above, I take the view that adopting strict and literal interpretation of Sections 3 and 5A (1) of the said Act No. 19 of 1990, which suggests that an order or judgement from a court of first instance in a Province can be challenged in any High Court within that same Province, will foster 'forum shopping'/ 'bench hunting'; lead to an imbalanced workload; cause inconvenience to litigants; create jurisdictional ambiguity; and result in administrative disarray. Additionally, 'forum shopping'/ 'bench hunting' may erode judicial impartiality and foster perceptions of bias. If the appellate and revisionary work is not systematically assigned, the High Courts face disproportionate caseloads, aggravating the delays in many pending cases. Such interpretation as mentioned above will eventually hamper the structure of the Court system amplified through the orders made by the relevant Minister demarcating judicial zones etc. Hence, adopting the rationale expressed above, it could be advocated that the forum conveniens for the appeal in this situation would be the

Provincial High Court of the Western Province holden in Gampaha [based on the Gazette Notification No. 1679/40 dated 10.11.2010 (as amended)].

In the totality of the circumstances, I am compelled to answer the question of law on which leave to appeal was granted in the affirmative, since the jurisdiction of the Provincial High Court of the Western Province (holden in Colombo) has technically not been affected as per the literal interpretation of the said provisions of Act No.19 of 1990. Thus, I proforma allow the Appeal. However, based on the reasons given above and the special circumstances of this case, the learned Judge of the High Court is directed to transfer the Revision Application of the Respondent-Petitioner-Appellant to the Provincial High Court of the Western Province (holden in Gampaha) to consider the matter on merits. Furthermore, I take the view that when an appeal or a revision application is irregularly filed, such a case should be administratively transferred to the relevant Provincial High Court within the respective Province, following (a) the reasons adduced in this Judgement and (b) the Order (as amended) published in the Gazette Extraordinary No.1679/40 dated 10.11.2010.

Judge of the Supreme Court

Yasantha Kodagoda PC. J.

I agree.

Judge of the Supreme Court

Janak De Silva J.

I agree.

Judge of the Supreme Court