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

In the matter of an Appeal from a judgment in the Civil Appellate High Court.

R.H.S.C. Soyza, Kimbulamaladeniya,
Berathuduwa, Gonapeenuwala.
Applicant

SC APPEAL 152/2014.
SC/SPL/LA/ 100/2014
HCALT/ 126/2012
LT /2/96/2010

Vs

Asiri Central Hospitals PLC, No. 37,
Horton Place, Colombo 07.
Respondent

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Asiri Central Hospitals PLC, No.37,
Horton Place, Colombo 07.

Respondent Appellant

Vs

R.H.S.C. Soyza, Kimbulamaladeniya,
Berathuduwa, Gonapeenuwala.

Applicant Respondent

AND NOW BETWEEN

Asiri Central Hospitals PLC, No. 37,
Horton Place, Colombo 07.

Respondent Appellant Appellant

Vs

R.H.S.C. Soyza Kimbulamaladeniya,
Berathuduwa, Gonapeenuwala.

Applicant Respondent Respondent

BEFORE : **S. EVA WANASUNDERA PCJ.**
H.N.J. PERERA J. &
VIJITH K. MALALGODA PCJ.

COUNSEL : Uditha Egalahewa PC with Vishva Vimukthi and N.K. Ashokbharan for the Respondent Appellant Appellant.
Dr. S.F.A. Coorey for the Applicant Respondent Respondent Respondent.

ARGUED ON : 19. 07. 2017.

DECIDED ON : 19. 09. 2017.

S. EVA WANASUNDERA PCJ. – ACTING CHIEF JUSTICE

Leave to Appeal was granted on the following questions of law by this Court.

1. Was the order of the Provincial High Court of the Western Province not just and equitable?
2. Was the order of the Provincial High Court of the Western Province against the weight of the evidence led before the Labour Tribunal?

3. Did the order of the Provincial High Court of the Western Province fail to consider that a mere name change of a corporate entity does not in any manner effect or render ineffectual or invalidate contractual obligations entered into and between the corporate entity and an employee?
4. Was the order of the Provincial High Court of the Western Province ex facie wrong as the learned High Court Judge failed to consider breach of several terms of the contract of employment?

R.H.S.C. Soyza was employed in the first instance by Asha Central Hospitals PLC on 27.12.1999 in the post of Lab Technician. Asha Central Hospitals PLC was changed to Asiri Central Hospitals PLC. The letter of appointment which was issued by the employer had specifically stated the terms and conditions of the contract between the employer and the employee. On 18.11.2009, the employer company suspended the employment of the workman employee with immediate effect due to the reason that the **workman had got employed in another institution 'without having obtained prior approval of the employer'** which act was in contravention of the terms and conditions of the contract of employment.

Later on the employer issued a charge sheet and held an internal diciplinary inquiry and thereafter terminated the services of workman Soyza with effect from 18.11.2009 by letter dated 15.03.2010.

Soyza the workman made an application to the Labour Tribunal on the 2nd of June, 2010 alleging that the employer company had terminated his employment unreasonably and unjustifiably and prayed for only compensation. The employer company filed answer admitting the employment of Soyza and stated that he was charge sheeted and an inquiry was held where he was found guilty of the charges and it was only thereafter that his services were terminated. Since the Employer admitted the termination, the employer company had to commence its case on the basis that the burden of proof was on the employer company to justify the same.

The employer company, Asiri Central Hospitals Limited PLC, the Respondent Appellant Appellant (hereinafter referred to as the Appellant) commenced its case on 11.03.2011 and led the evidence of three witnesses and concluded the Appellant's case on 02.06.2011. Thereafter the employee, Soyza, the Applicant

Respondent Respondent (hereinafter referred to as the Applicant) commenced his case on 06.10.2011 and gave evidence and led the evidence of one witness from the Family Planning Association of Sri Lanka and concluded his case on 15.03.2013. The Labour Tribunal President delivered his order on 14.09.2014 holding that the termination of the Applicant's services were unjust and unreasonable. He ordered that the Applicant be paid Rs. 6,35760/- as compensation. The Appellant preferred an Appeal to the Provincial High Court against the order of the Labour Tribunal. That Appeal was dismissed on 13.05.2014. The Appellant is now before this Court against the decision of the Provincial High Court. Leave to Appeal was granted on the questions of law enumerated above.

The evidence before court demonstrates that the Applicant is a bachelor and he had preferred to work in the night shift of the Appellant company as a Lab technician. He had been working for 10 years in that post at the time his services was suspended on 16.11.2009, the alleged reason being that the Applicant had been working at the same time in another institution, namely the Family Planning Association of Sri Lanka. He had worked at the Family Planning Association during the day time and had taken the night shift work at the Asiri Central Hospital.

Even though the learned High Court Judges at the Appeal stage, and the President of the Labour Tribunal at the stage of writing his order, have specifically mentioned that ' it should be at the first instance decided whether there was an existing contract of employment between the Appellant employer and the Respondent Applicant employee', it is quite obvious that the Applicant in his Application **had not contested** that the Appellant, Asiri Central Hospitals PLC was **the employer**. **It was not contended at all**. In fact it has been recorded at the commencement of the inquiry before the Labour Tribunal that the parties agree that the relationship between them was that of an employer and an employee. The High Court is obviously in error.

Moreover, the High Court judgment pronounces that 'the said question, even though mentioned by the Labour Tribunal as a question to be decided at the very outset, but had failed to consider the same' and therefore the Labour Tribunal is in error. Right thereafter the High Court Judges state, quite contrary to the reasoning which preceded, " therefore the Appellant fails in his

argument". I observe that there was no such argument by the Appellant that the contract of employment is not valid. In fact the argument of the Appellant is that there was a valid contract of employment and Clause 14 thereof specifically mentions that the employee cannot get employed in another place during the tenure of his office in the employer company. The High Court Judges have erred in their reasoning and there exists an error on the face of the record.

Then again, the learned judges of the High Court has stated that even though the Applicant is bound by the contract of employment R1 , the employer has mentioned in R3 that the employee has acted against the regulations of service marked as A2 and his services were terminated for breach of the regulations and not for breach of the terms of the contract. The High Court judges have found out by reading A2, that according to the regulations laid down by the employer company, when an employee has violated the regulations, the employer has to comply with the action laid down when an employee is in breach of the regulation, namely , firstly, he has to be verbally warned, secondly he has to be warned in writing, thirdly again he has to be warned in writing and it is only then, that the employee's services can be terminated. Since this procedure was not followed by the employer, the High Court has held that the termination is unjust and unreasonable.

I find that the learned High Court Judges have totally failed to see that when any person is employed by any institution, the first and foremost document signed by the parties is the " contract of employment". The parties are totally bound by the contract. The regulations regarding how the place of employment should be run by the employer with regard to the conduct of the employees , are totally in the hands of the employer and the regulations are made to lay down the set of rules by which the employer's administration division could be guided, with regard to other employees of the institution. The employer **cannot be pointed to , as having not done any step of the disciplinary steps** tabulated in their system for handling their own employees and neither can the employer be found fault with for having terminated the services of the employee due to that reason. The employee in this instance is found to be in breach of the **contract of employment.** The contract of employment is the **primary document** and all other documents are ancillary.

The learned High Court Judges have analyzed the evidence before the Labour Tribunal in **quite the wrong way** and arrived at a wrong conclusion.

The Applicant had filed his Application dated 02.06.2010 which contains 8 paragraphs and the prayer. The Applicant had firstly stated that **Asiri Central Hospitals Limited** employed him by letter dated 27.12.1999 as a Lab Technician on a monthly salary basis subject to a probation period. He had mentioned that he was confirmed in his employment with effect from 01.12.1999 by a letter from the Secretary to the **Asiri Central Hospitals Limited** dated 08.03.2001. He had mentioned that his services were suspended temporarily for the reason that he was serving in another institution without prior approval from the Appellant and **to show cause as to his action against the contract of employment**. He had shown cause by letter dated 09.12.2009, and thereafter there had been a domestic disciplinary inquiry at the end of which it is alleged that his services were unreasonably and unjustly terminated on 15.03.2010. The Applicant's prayer is not for reinstatement but only for compensation. **The Applicant did not contest the contract of employment at all.**

Clause 14 of the Contract of Employment was signed by the Applicant on 16.03.2000. He was employed from 01.12.1999. The employer had verified from the Family Planning Association whether the Applicant was working for them and they had answered in the affirmative that the Applicant had been working for them on Locum basis for over one year or so. The Applicant had admitted that fact and stated further that Asiri Hospitals Limited PLC had benefitted by his working at FPA because he had directed the blood samples from FPA to Asiri Central Hospitals Lab bringing profits to the Appellant. His position was that everybody knew that he worked in the FPA during the day time and worked at Asiri Central Hospital in the night. The reason for doing so was also stated as wanting to earn more money due to personal family problems. However it was an **admitted fact that he was in breach of the contract of employment.** In his evidence before the Labour Tribunal the Applicant has answered under cross examination on 10.01.2012 that he was at that time employed at the Family Planning Association as a Lab Technician.

The Labour Tribunal had awarded three years salary as compensation to the Applicant holding that the Appellant had terminated the Applicant's services

unjustly and unreasonably. The learned High Court judges had affirmed the order of the Labour Tribunal. The President of the Labour Tribunal had held that the contract of employment marked as R1 is not a contract which can be implemented because it had been signed between Asha Central Hospital and the Applicant and not between the Appellant and the Applicant. It is quite an unnecessary and a wrong analysis since it was pointed out that the name of the employer had changed but it was the same company and moreover the **Applicant had not even contested that the Appellant was not holding the position as employer of the Applicant.**

I answer the questions of law enumerated above in favour of the Respondent Appellant Appellant and against the Applicant Respondent Respondent. I set aside the Order of the Civil Appellate High Court of the Western Province holden in Colombo dated 13th May, 2014. I set aside the award of the Labour Tribunal dated 14th September,2012 and dismiss the Application of the Applicant Respondent Respondent made to the Labour Tribunal bearing No. LT 2/96/2010.

The Appeal is allowed. However I order no costs.

Judge of the Supreme Court
Acting Chief Justice.

H.N.J.Perera J.
I agree.

Judge of the Supreme Court

Vijith K. Malalgoda PCJ.
I agree.

Judge of the Supreme Court