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

In the matter of an Application for Leave to Appeal in terms of Article 154 P (3) (b) of the Constitution and Provisions of the Industrial Dispute Act No. 43 of 1950 (as Amended)

The Ceylon Estate Staffs' Union,
No. 06, Aloe Avenue, Colombo 03.
[On behalf of S.M.P.N. Samarakoon]

Applicant

SC Appeal 93/2019
WP/PHC/AV/10/2014ALT
LT Case No. 19/AV/738/12

Vs,

1. The Manager,
   Woodend Estate, Mahaoya Group, Dehiovita.

2. Lalan Rubbers (Pvt) Ltd,
   No. 198B, Gnanendra Mawatha, Nawala.

Respondents

And Between

Ceylon Estate Staffs' Union,
No. 06, Aloe Avenue, Colombo 03.
[On behalf of S.M.P.N. Samarakoon]

Applicant-Appellant

Vs,

1. The Manager,
   Woodend Estate, Mahaoya Group, Dehiovita.

2. Lalan Rubbers (Pvt) Ltd,
   No. 198B, Gnanendra Mawatha, Nawala.

Respondents- Respondents

And now between

1. The Manager,
   Woodend Estate, Mahaoya Group, Dehiovita.

2. Lalan Rubbers (Pvt) Ltd,
   No. 198B, Gnanendra Mawatha, Nawala.

Respondents- Respondents-Appellants

Vs,

Ceylon Estate Staffs' Union,
No. 06, Aloe Avenue, Colombo 03.
[On behalf of S.M.P.N. Samarakoon]

Applicant-Appellant -Respondent

Before: **Justice Vijith K. Malalgoda, PC**
Justice A. L. Shiran Gooneratne,
Justice K. P. Fernando,

Counsel: M. Adamaly with Ms. Anoukshi Widanagamage instructed by Ms. Dinusha Mirihana for the Respondents-Respondents-Appellants

Pradeep Perera for the Applicant-Appellant-Respondent

Argued on: 20.03.2023

Decided on: 20.07.2023

Vijith K. Malalgoda PC J

The Respondents-Respondents-Appellants (hereinafter referred to as Respondents-Appellants) had initiated the instant appeal against the order of the High Court of Avissawella in a Labour Tribunal Appeal Pending before the said High Court.

As revealed before us the Applicant-Appellant-Respondent (hereinafter referred to as the Applicant-Respondent) who was employed by the Respondents-Appellants as a "Field Officer", filed an application before the Labour Tribunal of Avissawella against the unlawful termination of him by the said employer.

When the Labour Tribunal dismissed his application by order dated 23rd October 2014, and being dissatisfied with the said order the Applicant-Respondent appealed against the said order to the High Court of Avissawella. The learned High Court Judge by his order dated 27th November 2017 allowed the appeal and reinstated the Applicant-Respondent with back wages.

Against the said order the Respondents-Appellants had sought special leave from the Supreme Court and this Court on 28th May 2019 granted special leave on the following questions of law.

d) Has the learned High Court Judge erred in law in failing to consider that the Labour Tribunal is the best judge of the facts and or by replacing the Tribunal's findings with his own view of the facts?

e) Has the learned High Court Judge erred in law in failing to consider the past record of the Respondent and or its impact in differentiating the respondent from other employees in the taking of disciplinary action for misconduct?

f) Has the learned High Court Judge erred in law in giving undue weight to the non-production of the Domestic Inquiry Report when, in any event, the burden is on the Petitioners to justify termination of employment before the honourable Labour Tribunal?

l) In any event, has the learned High Court Judge erred in law in granting reinstatement to the Respondent and failing to take cognizance of the fact that the Petitioners cannot repose any confidence in the Respondent and or that reinstatement would, in these circumstances, disrupt discipline and or industrial harmony in the Petitioner company?

The Applicant-Respondent who was recruited as a Junior Assistant Field Officer in the year 1997 to Udabage Estate was working as a Field Officer of Woodend Estate -Dehiovita at the time his services were terminated by the Respondents-Appellants. Prior to his termination, the Applicant-Respondent was served with two charge sheets by his employer and a domestic inquiry was held against him. Consequent to the said inquiry his services were terminated with effect from 18th December 2011. The Applicant-Respondent who went before the Labour Tribunal of Avissawella against the said termination had prayed *inter-alia* a reinstatement from the date of suspension from the service, back wages, and compensation for illegal, unfair, and unlawful termination of his service. He has further complained to the Labour Tribunal that there was no proper evidence led against him at the domestic inquiry and therefore the employer could not establish charges against him.

As revealed before us two sets of charges were framed against the Applicant-Respondent at the Domestic Inquiry. The first charge sheet dated 01.11.2010 was produced at the inquiry before the Labour Tribunal marked R41A and the second charge sheet dated 22.03.2011 was produced marked R9A. The first set of charges was based on the alteration of entries in the books maintained by the Applicant-Respondent. The other charges were based on the duties entrusted to a casual labourer as against the rubber tappers.

The extent to which the facts that were revealed before the Labour Tribunal should be considered by an Appellate Court and whether the High Court had analyzed the evidence placed before the Labour Tribunal in its correct perspective was the basis for the questions of law that were to be considered by me in the instant judgment.

Section 31 D (2) of the Industrial Disputes Act No. 43 of 1950 (as amended- hereinafter referred to as the Act) does not permit an appeal from the Labour Tribunal on the questions of facts. However, in the case of ***Ceylon Transport Board Vs. N. M. J. Abdeen 70 NLR 407***, it was held by the Supreme Court that,

> "Where the President of a Labour Tribunal misdirects himself on the facts, such misdirection amounts to a question of law within the meaning of section 31D (2) of the Act.

In the case of ***Ceylon Transport Board Vs. W.A.D. Gunasinghe 72 NLR 76*** it was also held that,

> "Where a Labour Tribunal makes a finding of fact for which there is no evidence – a finding which is both inconsistent with the evidence and contradictory of it – the restrictions of the

> right of the Supreme Court to review questions of law does not prevent it from examining and interfering with the order based on such findings if the Labour Tribunal is under a duty to act judicially."

In the case of ***The Caledonian (Ceylon) Tea and Rubber Estates Ltd Vs. J.S. Hillman,*** it was held that,

> "Inasmuch as an appeal lies from an order of a Labor Tribunal only on a question of law an Appellant who seeks to have a determination of facts by the Tribunal set aside must satisfy the Appellate Court that there was no legal evidence to support the conclusion of facts reached by the Tribunal, or that the finding is not rationally possible and is perverse even with regard to the evidence on record"

In the above circumstances, it is clear that an Appellate Court will not simply interfere with the findings of a Labour Tribunal unless the order made by the Labour Tribunal is perverse, the evidence is not supportive of the conclusion reached, the evidence is inconsistent or contradictory with the finding.

Even if the Appellate Court takes a different view, regarding an appeal before such Court, the evidence supports the view taken by the Labour Tribunal, in such a situation the role of the Appellate Court was discussed in the case of ***Ceylon Cinema and Films Studio Employees' Union V. Liberty Cinema (1994) 3 Sri LR 121*** as follows;

> "The question of assessment of the evidence is within the province of the Labour Tribunal and if there is evidence on record to support its findings, the Appellate Court cannot review those findings even though on its own perception to the evidence it may be inclined to come to a different conclusion."

When the Applicant-Respondent appealed against the findings of the Labour Tribunal to the High Court, the High Court by its order dated 27th November 2017 allowed the Appeal and made an order to reinstate the Applicant with back wages. Since the High Court decided to interfere with the finding of the Labour Tribunal in appeal, this Court will consider the legality of the said order, and in the said circumstances this Court will be considering the evidence led before the Labour Tribunal and the matters that were considered by the High Court when reversing the finding of the Labour Tribunal.

During the inquiry before the Labour Tribunal the Respondents (Respondents-Appellants before this Court) led the evidence of three witnesses including the General Manager of Mahaoya Group Thilakarathne, two Managers from Pinkanda Estate, Cristopher Senevirathne, and Rangajeewa Alahakoon. During their evidence, it was revealed that when the Applicant (Applicant-Respondent before this Court) was working as a field officer at Woodend Division of Mahaoya Estate he was served with a letter dated 20.07.2010 calling his explanation for discrepancies observed between the latex weighing register and the daily progress report both prepared by the Applicant. The above discrepancy was further observed on the name cards of the Rubber Tappers. According to the witnesses, these figures should be the same, and the wages of the tappers were prepared on the information contained in those documents. The name cards carried by the tapper will indicate the quantity of latex collected by the tapper and the said figure cannot be different from the entries made in the weighing register. The above discrepancies were further observed in the daily wages form on which the salaries were paid to the Rubber Tappers.

Since the explanation provided by the Applicant was unsatisfactory, the management of Mahaoya Group decided to inquire into the said matter and a charge sheet was issued to the Applicant with two charges (R41A)

Whilst the above inquiry was pending against the Applicant another charge sheet was served on the Applicant-Respondent which contained 4 charges for including a casual Labourer by the name of Somawathi into the check roll of rubber tappers and allowing her to work in his division as a tapper without obtaining approval from the management (R-9A). There was evidence led before the tribunal to the effect that in three months, i.e., in the months of July, August, and September her name was included as a Tapper while she worked as a casual Labourer. According to the witnesses Applicant being the most senior field officer of the Woodend division it was his responsibility to maintain records correctly and allowing one Labourer to get an advantage against the Tappers employed by the estate is illegal as per the instructions issued to the Field Officers (R-33). As per the domestic inquiry proceedings which were produced marked R-11, evidence had been led at the inquiry that when the employees attached to a division is insufficient, the field officers are permitted to use casual Labourers with the permission of the management but no such permission had been obtained by the Applicant-Respondent to obtain the services of casual laborer Somawathi as a tapper. However, on several occasions, the Applicant-Respondent had obtained the services of Somawathi as a Tapper.

As observed by me, the President of the Labour Tribunal had correctly analyzed the evidence placed before the Labour Tribunal by the above witnesses in detail and had concluded that the employer had established the charges leveled against the Applicant-Respondent except for charge 2 in R-41A and charge 3 in R-9A where the Applicant was found not guilty at the domestic inquiry.

When analyzing the evidence placed before the tribunal, the President was mindful of the matters elicited by the Applicant in cross-examination of the witnesses, especially with regard to four instances where field assistants namely Kamalaraj and Sureka entered the name of Somawathi as a Tapper.

In his order, the President Labour Tribunal had considered this issue as follows;

> "ඒ අනුව ඉල්ලුම්කාර පාර්ශවය අවධාරනය කර තිබෙන්නේ තමන් සේවයට වාර්තා නොකරන ඉහත දිනවල ද සිල්ලර වැඩට යොදවන ලද ටී. සෝමාවතී යන ස්ත්‍රිය කිරි කම්කරුවකු වශයෙන් වෙක් රෝලයට ඇතුලත් කර ඇති බවත් එහෙත් ඔවුන් සම්බන්ධයෙන් කිසිදු විනය ක්‍රියා මාර්ගයක් ගෙන නොමැති බවයි. වගඋත්තරකරු ඔවුන් සම්බන්ධයෙන් එවැනි විනය ක්‍රියා මාර්ගයක් නොගත්තත් ඔවුන්ට ඒ සම්බන්ධයෙන් අවවාද කර ඇති බවත් ඉල්ලුම්කරු මීට පෙර ද මෙවැනි වරදවල් සිදුකර තිබීම නිසා ඔහු සම්බන්ධයෙන් විනය ක්‍රියා මාර්ගයක් ගැනීමට තීරණය කල බව අවධාරනය කර ඇත. එසේම ඉල්ලුම්කරු Woodend කෙටසේ ක්ෂේත්‍රනිලධාරි බැවින් ඔහු යටතේ සිටින අනිකුත් ක්ෂේත්‍රනිලධාරීන්ගේ අකටයුතුකම් පිලිබඳ සොයා බැලීමේ වගකීමක් ඉල්ලුම්කරුට ඇති බව වගඋත්තරකරු පෙන්වා දී ඇත."`

As further observed by me, the President of the Labour Tribunal was mindful of the domestic inquiry held against the Applicant-Respondent and had referred to the Domestic Inquiry proceedings produced before him marked R-11 in his order. However, when concluding that the Applicant-Respondent was guilty of the charges level against him except for charge 2 in R41A and charge 3 in R-9A he had analyzed the evidence placed before him by the Respondents-Appellants at the Trial. He has not considered evidence given by the witnesses with regard to two charges where the Applicant-Respondent was discharged at the Domestic Inquiry. Therefore, it is clear that the President of the Labour Tribunal was mindful that the Applicant-Respondent was found not guilty of two charges at the Domestic Inquiry.

When the matter was appealed to the High Court by the Applicant, the learned High Court Judge had analyzed the evidence placed before the Labour Tribunal and observed the following; (page11)

..... “ඒ අනුව ඉල්ලුම්කාර අභියාචක විසින් මෙම ලේඛනය සකස් කොට නොමැති බවක් ද, එම සාක්ෂිය අනුව තහවුරු වන අතර කමල්රාජ් වැනි සෙසු සහකාර ක්ෂේත්‍ර නිලධාරීන් විසින් සකස් කරන ලේඛන බවට එකී ලිඛිත දේශනය මෙම අධිකරණයට තහවුරු වේ. නමුත් උගත් කම්කරු විනිශ්චය සභාවේ සභාපති වරයා එකී තත්වය සැලකිල්ලට නොගෙන ස්වකීය තීන්දුව දී ඇත. එය නීතිමය වශයෙන් වරදකි.”

The learned High Court Judge had observed a failure by the Labour Tribunal President to consider the conduct of the Respondents-Appellants when the Respondent decided not to charge sheet the Field assistants as follows; (page13)

“ඉල්ලුම්කාර අභියාචක කරන ලද එකී ක්‍රියාව කළමණාකාරීත්වය විෂමාචාර ක්‍රියාවක් ලෙස සලකන්නේ නම් ඉල්ලුම්කාර සේවකයාට අමතරව එම ක්‍රියාව සිදු කර ඇති අනෙක් සේවකයන් සම්බන්ධයෙන් ද වගඋත්තරකාර පාර්ශවය, ඉල්ලුම්කාර සේවකයා සම්බන්ධයෙන් ගෙන ඇති විනය ක්‍රියාමාර්ගය අනුගමනය නොකිරීම ඔවුන් සම්බන්ධයෙන් ලිහිල් ප්‍රතිපත්තියකිනුත් ඉල්ලුම්කාර සේවකයා වෙනුවෙන් දැඩි ප්‍රතිපත්තියකිනුත් කටයුතු කිරීම ඉල්ලුම්කාර අභියාචක සම්බන්ධයෙන් වගඋත්තරකරු වෙනස් ලෙස ක්‍රියාකර ඇති බවත්, එය අසාධාරණ, අයුක්ති සහගත ක්‍රියාවක් බවත්, අභියාචක විසින් ඔහුගේ ලිඛිත දේශන වලදී ප්‍රකාශ කොට ඇති අතර, මෙම සාක්ෂිය පිළිබඳව විශ්ලේෂණය කරන විටද එම තත්වය මෙම අධිකරණයට ද තහවුරු වේ. නමුත් එකී තත්වය කිසිසේත්ම නොසලකා කම්කරු විනිශ්චය සභාවේ සභාපතිවරයා ස්වකීය තීන්දුව වැරදි සහගත ලෙස නිකුත් කොට තිබේ.”

The learned High Court Judge had once again considered the same issue in his order as follows; (pages 14-15)

“එසේ ආර් 29 ඒ ලේඛනයේ සඳහන් තොරතුරු සුරේඛා නැමති සහකාර ක්ෂේත්‍ර නිලධාරීවරිය විසින් සටහන් කර තිබෙන බවද, අභියාචකගේ අත්සන එහි නොමැති බවද, වගඋත්තරකරුවන් වෙනුවෙන්ම සාක්ෂි දුන් සමානාධිකාරීවරයාගේ සාක්ෂියේ දී ම පිළිගෙන තිබේ. ඒ අනුව එකී ලේඛණය සම්බන්ධයෙන් ද, ඉල්ලුම්කාර අභියාචක විසින් වංචනික ලෙස සකස් කරන ලද ලේඛණ යනුවෙන් තහවුරු වී ඇති අතර, එම ලේඛණ සුරේඛා නැමති සහකාර ක්ෂේත්‍ර නිලධාරීවරිය අත්සන් කොට ඇති බවත්, කමල්රාජ් නැමැති සහකාර ක්ෂේත්‍ර නිලධාරී විසින් ආර් 29 බී ලේඛණය සටහන් කොට අත්සන් කොට ඇති බවත්, මෙම සමානාධිකාරීවරයා පිළිගෙන ඇත. ඒ පිළිබඳව ආර් 29 පී. ආර් 29 ඒ, ආර් 29 බී, ආර් 29 ඩී, ආර් 29 එෆ් ලේඛණවල වුඩ්එන්ඩ් කොටසේ සහකාර ක්ෂේත්‍ර නිලධාරී වශයෙන් සුරේඛා නැමැත්තිය සහ කමල්රාජ් නැමැත්තා සටහන් ලියා තිබෙන හෙයින් ඔවුන්ට වගකීම පැවරෙන කටයුත්තක් බව ද, ඉල්ලුම්කාර අභියාචක වෙනුවෙන් කම්කරු විනිශ්චය සභාවේ දී සහකාර සමානාධිකාරීවරයාගෙන් ප්‍රශ්නකොට ඇති අතර, එම සමානාධිකාරීවරයා එම තත්වය පිළිගෙන ඇත. ඔහු ප්‍රකාශ කොට ඇත්තේ, ඔවුන් පුද්ගලිකවම වගකිවයුතු බවත්, සියලුම නිලධාරීන් තමන් අතින් ලියන ලද ලේඛණ සම්බන්ධයෙන් වගකිව යුතු බවය. එසේ වුවද, එම නිලධාරීන්

සම්බන්ධයෙන් කිසිදු විනය ක්‍රියාමාර්ගයක් ගෙන නොමැති බවද, ඔහු හරස් ප්‍රශ්න වලදී තවදුරටත් පිළිගෙන ඇත.”

In a plain reading of the Judgment of the learned High Court Judge, it appears that he had restricted his judgment to a few issues. As observed by me the main issue he considered was the different treatment given to the Applicant as against two of his subordinates Kamalraj and Sureka. As already referred to by me, the President of the Labour Tribunal had analyzed the evidence given by the witnesses for the Respondents-Appellants in cross-examination, the documents produced in this regard, and the evidence given by the Applicant on this issue and given his reasons for his conclusion.

In his judgment, the High Court Judge has further gone into the answers given by the key witnesses with regard to the domestic inquiry. In this regard the High Court had further observed;

“කෙසේ වෙතත් ගෘහස්ථ විනය පරීක්ෂක නිලධාරීන්ගේ වාර්තාව වගඋත්තරකරුවන් විසින් තමන් වෙත ඉදිරිපත් කර නොමැති බවය. ඒ අනුව වගඋත්තරකරුවන් විසින් විනය පරීක්ෂණයේ පරීක්ෂණ වාර්තාව උගත් කම්කරු විනිශ්චය සභාවේ සභාපති වරයා වෙත ඉදිරිපත් නොකර එකී වාර්තාවේ කරුණු වසන් කිරීමක් සිදුකොට ඇති ආකාරයක්ද මෙම අධිකරණයට නිරීක්ෂණය වේ.”

As already referred to by me, Labour Tribunal was mindful of the proceedings of the Domestic Inquiry but, mainly relied on the evidence placed before the Labour Tribunal during the trial by both parties with regard to the charges on which the Applicant was found guilty at the Domestic Inquiry.

The President of the Labour Tribunal when deciding the above issues, was guided by the evidence and the documents placed before him. He had the advantage of observing the demeanor and the deportment of the witnesses who testified before him. Therefore, he is the best judge who can decide on the evidence placed before him ***Kotagala Plantations Ltd and another Vs. Ceylon Plantations Society 2010 (2) Sri LR 299***.

In appeal, our Courts are reluctant to interfere with the finding of the Trial Judge (including the findings before the Labour Tribunal) unless the order is not supported by the evidence. The learned High Court Judge is free to hold his view but, he needs to justify his findings. ***Jayasuriya Vs. Sri Lanka State Plantation Corporation 1995 (2) Sri LR 379***

As observed by this Court, High Court had overlooked the evidence led against the Applicant-Respondent which was analyzed in detail by the Labour Tribunal but come to a different conclusion

based on matters that had been correctly analyzed by the Labour Tribunal as already referred to in this Judgment.

For the reasons I have already referred to in this Judgment, I answer the first three questions of law in the affirmative and it is sufficient to allow the appeal before this Court.

The appeal is allowed. I make no order with regard to costs.

Judge of the Supreme Court

Justice A. L. Shiran Gooneratne,

I agree,

Judge of the Supreme Court

Justice K. P. Fernando,

I agree,

Judge of the Supreme Court