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

In the matter of an Application for Leave to Appeal to the Supreme Court from an Order of the Provincial High Court under and in terms of section 31DD of the Industrial Disputes Act (as amended)

SC Appeal No: 139/2017

SC/HC/LA No. 92/2016
HC Appeal No. 428/2012
Negombo LT No: 21/2596/2009

W.K.S. Jayasundara,
309 A, Nedagamuwa (West),
Katugoda.

APPLICANT

-VS-

Next Manufacturing (Pvt) Ltd.,
Ring Road, Phase I,
Investment Promotion Zone,
Katunayake.

EMPLOYER- RESPONDENT

AND BETWEEN

Next Manufacturing (Pvt) Ltd.,
Ring Road, Phase I,
Investment Promotion Zone,
Katunayake.

EMPLOYER-RESPONDENT-APPELLANT

-VS-

W.K.S. Jayasundara,
309 A, Nedagamuwa (West),
Katugoda.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Next Manufacturing (Pvt) Ltd.,
Ring Road, Phase I,
Investment Promotion Zone,
Katunayake.

EMPLOYER-RESPONDENT-APPELLANT-APPELLANT

-VS-

W.K.S. Jayasundara,
309 A, Nedagamuwa (West),
Katugoda.

APPLICANT-RESPONDENT RESPONDENT

BEFORE : **VIJITH K. MALALGODA, PC, J.**
P. PADMAN SURASENA, J.
S. THURAIRAJA, PC, J.

COUNSEL : Ms. Manoli Jinadasa with Ms. Shehara Karunatne instructed by Pieris and Pieris for the Employer Respondent – Appellant-Appellant.

Thanuka Nandasiri for Applicant – Respondent – Respondent.

ARGUED ON : 10th February 2020.

WRITTEN SUBMISSIONS : Employer Respondent-Appellant –Appellant on the 28th of July 2017.

Applicant – Respondent – Respondent on the 26th February 2018.

DECIDED ON : 9th June 2020.

S. THURAIRAJA, PC, J.

The Employer, Next Manufacturing (Pvt) Ltd. is the Employer - Respondent – Appellant – Appellant (hereinafter sometimes referred to as the Employer – Appellant). The Employee, Ms. W.K.S. Jayasundara is the Applicant – Respondent – Respondent (hereinafter sometimes referred to as the Employee – Respondent).

It was revealed at the Labour Tribunal that the Employee – Respondent was a Senior Clerk in the Human Resources division of the said Company and was employed with the Employer- Appellant from 13.12.1993. Employee – Respondent claimed that her services were terminated along with other employees after paying of nominal compensation and obtaining signatures to the documents hence the said termination of services is unjust and inequitable. The Employee – Respondent filed an application in the Labour Tribunal and stated *inter alia* as follows.

(a) That Employee – Respondent joined the company on 13.12.1993 and was the Senior Clerk- Human Resources on or around 15.05.2009;

(b) That on or around 15.05.2009, 20-25 employees including her had been terminated from their employment in unjust and inequitable manner by getting them signed to a document and giving them a nominal compensation and obtaining signatures to documents;

Employer – Appellant filed their answer and stated that the services of Employee- Respondent had ended in consequence of a Voluntary Retirement Scheme which was formulated in a manner consistent with the provisions of the Gazette Extraordinary No. 1384/07 dated 15.03.2005 under the Termination of Employment of Workmen (Special Provisions) Act 45 of 1971.

The Employer- Appellant is a business establishment engaged in manufacturing of Apparel for export. Necessarily, the success of the business is contingent upon market forces, to be precise the 'demand' for apparel in the overseas markets. The learned counsel for the Employer- Appellant in the course of her submissions contended that it is the global economic recession in the apparel industry, which necessitated such reduction of staff.

The Employer- Appellant raised a preliminary objection at the Inquiry in the Labour Tribunal that when section 12(1) settlement entered between the Employer-Appellant and Employee- Respondent under the Industrial Disputes Act (IDA), this application cannot be maintained before the Labour Tribunal. The Employer-Appellant led the evidence of Mr. Somasiri Perera and the retired Assistant Commissioner of Labour who had who had entered the Section 12(1) settlement. The retired Assistant Commissioner of Labour gave evidence and produced the following documents.

a) Application made by the Employer – Petitioner to the Assistant Commissioner of Labour for retrenchment of employees (marked 'R1');
b) Section 12(1) order which is signed by the Employee – Respondent (marked 'R2');
c) The minutes of the meeting at which the said section 12(1) order was signed (marked 'R3');
d) The calculation of compensation (marked 'R4').

The retired Assistant Commissioner of Labour in his evidence stated that, both the emloyer and employees discussed and negotiated the terms of the settlement

prior to signing the settlement. Further, he confirmed that, the employees were well advised on the terms of settlement and were specifically and repeatedly advised that they do not have to sign the agreement, if they are not agreeable to the same. The General Manager Sumudu Kannangara confirmed in his evidence that the Section 12(1) settlement was entered into in the presence of both the Assistant Commissioner of Labour and the official from the Board of Investment (BOI) and the employees had the opportunity, if they so wished to withdraw from the settlement. Further, all payments to employees were duly made and only the Employee – Respondent had maintained this present Labour Tribunal action. The minutes of the meeting at which the settlement was signed (marked as 'R3') revealed that 21 employees had attended the meeting whilst the document 'R2' reveals that two employees namely, W.K.R. Jayasooriya and K.A.P Fernando who attended the meeting had not signed the settlement. This reveals that the employees had the freedom to refrain from entering into the settlement if they so wished. However, the Employee – Respondent had signed the settlement. Counsel for the Employee – Respondent vehemently denied the said position of the Employer- Appellant.

At the conclusion of the Labour Tribunal Inquiry, the learned President made the order dated 30.08.2011 and held that, the Employer- Appellant had not followed the due procedure in terminating the services of the Employee – Respondent and that Section 12(1) settlement has been entered upon against the will of the Employee – Respondent therefore the termination of her services is unjust and inequitable hence awarded a sum of Rs. 297,000/- as compensation.

Being aggrieved by the order of the learned President of Labour Tribunal the Employer- Appellant appealed to the Provincial High Court. By order dated 22.11.2016 the Provincial High Court affirmed the order of the Labour Tribunal and dismissed the appeal.

Being aggrieved by the order of the Provincial High Court the Employer-Appellant preferred an appeal to this court.

Court being satisfied, granted leave under paragraph 21 (a) and 21 (b) of the petition dated 20.12.2016 the same as reproduce below for the purpose of easy reference;.

(a) *Whether the Labour Tribunal lacks jurisdiction to disturb a settlement made under section 12(1) of the Industrial Disputes Act which amounts to a full and final settlement in law?*

(b) *Whether the Provincial High Court and Labour Tribunal erred in law in the in the analysis of the evidence and reached findings which are perverse?*

The Employer- Appellant submits to Court that, said agreement was reached under Section 12(1) (to be read with section 14) of the (IDA). Further submits that, if there is any dispute out of a settlement received under Section 12(1) of the IDA provides remedy under Section 15 of the said Act.

The major question of law raised by the Counsel for the Employer- Appellant is when the Commissioner of Labour had exercised his jurisdiction under Section 12(1) can the President of the Labour Tribunal have jurisdiction.

As per the submitted facts, due to the world economic recession, the Employer- Appellant Company namely, Next Manufacturing (Pvt) Ltd which is a BOI approved company had sought permission from the Commissioner of Labour to retrench some of their excess staff. The Commissioner of Labour in the presence of Board of Investment had officiated negotiation between the Employer and Employees including Employee – Respondent (refer 'R3 and R2') out of 21 employees 19 had opted to sign and obtained the compensation.

After obtaining the compensation on 15.05.2009 the Employee – Respondent complained to the President of Labour Tribunal on 20.08.2009 that she had been forced to sign a document which she could not read and understand. When the matter was taken up Employer- Appellant raised a preliminary objection about the

jurisdiction (at page 118-121 of the brief) but Labour Tribunal decided to take up the matter for inquiry. Inquiry commenced and evidence led including Assistant Commissioner of Labour. Both parties made submissions, produced documents as evidence before the President of Labour Tribunal.

The main submission by the Employee- Respondent before the Labour Tribunal was that she was forced to sign an unread document. The placing of signature had occurred in front of the Commissioner of Labour and representatives of the Board of Investment. When the Assistant Commissioner of Labour gave evidence this was never questioned nor suggested to him.

Counsel for the Employer- Appellant made submissions before this Court and confined a question of law that Section 12 (1) gives jurisdiction to the Commissioner of Labour which is a parallel jurisdiction to the Labour Tribunal. Therefore, the President of Labour Tribunal cannot hear and determine this issue. Further submits the affirmation of the order of the Learned President of Labour Tribunal by affirming the High Court is bad in law.

Conciliation process is dealt in Section 12(1) of the IDA. When the employer and employee enters into settlement on any industrial dispute with the assistance of the Commissioner of Labour or any officer acting on his behalf, the Commissioner of Labour is empowered to draw up a memorandum setting out the terms of settlement and the said settlement shall be signed by both parties.

In section 12(1) and 12(2) of the IDA the said settlement was described as follows.

> *12. (1) If the Commissioner or an authorized officer succeeds in settling an industrial dispute, a memorandum setting out the terms of settlement shall be drawn up by the Commissioner or the officer and shall be signed by both the parties to the dispute or by the representatives of each party thereto.*

(2) Reference shall be made in every memorandum of settlement drawn up under subsection (1) to the parties and trade unions to which, and employers and workmen to whom, such memorandum relates.

In terms of section 14 of the IDA reads as,

14. Every settlement which is for the time being in force shall, for the purpose of this Act, be binding on the parties, trade unions, employers and workmen referred to in that settlement in accordance with the provisions of section 12(2) and the terms of the settlement shall be implied terms in the contract of employment between the employers and workmen bound by the settlement.

The remedy to set aside a section 12(1) settlement is dealt with section 15 of the IDA where there is a provision to make an application to withdraw from such a settlement.

15. (1) Any party, trade union, employer or workman, bound by a settlement under this Act, may repudiate the settlement by written notice in the prescribed form sent to the Commissioner and to every other party, trade union, employer and workman bound by the settlement:
Provided that : -

(a) it shall not be necessary for any employer or any workman who is a member of a trade union which is, or is included in, a party bound

by the settlement to be so notified independently of his trade union; and

(b) any employer or workman, who is a member of a trade union which is, or is included in, a party bound by the settlement, shall not be entitled to repudiate the settlement independently of such Trade Union, and any notice of repudiation given independently by any such employer or workman shall not be a valid notice for the purposes of this Act.

Section 12 to 15 of the IDA lay down the procedure to be followed where a settlement has been concluded or in cases where the parties (or either of them) do not accept the settlement arrived at. In cases where the settlement arrived at is acceptable to both parties, a Memorandum setting out the terms of settlement is drawn up and signed by both parties or their representatives, and such Memorandum is transmitted with the least amount of delay to the Commissioner of Labour. Where the Commissioner is of the view that such settlement relates to a major issue, he is obligatory by Section 12 (6) of the IDA to cause such Memorandum of Settlement to be published in the Government Gazette, and notice of such publication is sent to both parties.

The Memorandum of Settlement so published comes into effect on the date of such publication, or on a date which may be specified in the Memorandum of Settlement. It is important to note that the legal effect of this procedure is that the settlement is binding on both parties, and any decisions recorded in the Memorandum of Settlement becomes part of the Contract of Employment between the parties bound by the settlement.

In Law of Dismissal by S.R. De Silva at page 3 stated that,

"Every settlement which is a memorandum within the meaning of Section 12 of the Industrial Disputes Act and which is for the time being in force is binding on the parties, trade unions, employers and workmen referred to in the settlement and its terms become implied terms in the contracts of employment between the employers and workmen bound by the settlement. Such a settlement has the same effect as a Collective Agreement or an award of an Arbitrator or Industrial Court, in relation to those bound by the settlement. "

Where the settlement recommended by the Memorandum is not accepted by the parties or one of them, but where the Commissioner is of the opinion that such Memorandum should be published, it will be published in the Sri Lanka Government Gazette with a statement that the settlement recommended has not been accepted nor deemed to have been accepted by either party or both.

Section 15 of the IDA lays down the procedure for repudiation of a settlement. Section 15 (1) specifically states that where repudiation or termination of a Memorandum of Settlement is envisaged, such party repudiating the settlement must send notice of repudiation in the prescribed form to the Commissioner of Labour and every other party bound by the settlement, though not individually. Regulation No. 3 made under the IDA published in the Government Gazette of 12 March 1959 in this respect states that such notice of repudiation must be on Form A set out in the First Schedule to the Regulations. Thus it will be seen that any settlement to be repudiated by either party must follow the prescribed procedure.

Once the Commissioner of Labour receives a notice of repudiation, he will cause such notice to be published in the Government Gazette, and the settlement will cease to be effective from the end of the month immediately proceeding the month in which the notice is received. It must also be understood that the repudiation or termination of such a settlement will apply only to those parties who

give such notice of repudiation or termination and not to others who have been parties to the settlement.

In my view the process of conciliation in the settlement of labour disputes of the greatest importance, specially in present context, when the process of mediation is being resorted to solving larger problems, both legal and otherwise.

Considering all I find that, when the matter is settled under section 12(1) of the IDA as discussed above, the Labour Tribunal has no jurisdiction. I answered the question of law raised affirmatively. Accordingly I set aside the order of the Learned President of the Labour Tribunal and Learned Judges of the High Court and allow this appeal.

Appeal allowed.

JUDGE OF THE SUPREME COURT

VIJITH K. MALALGODA, PC, J.
I agree

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree

JUDGE OF THE SUPREME COURT