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

In the matter of an Application for Leave to Appeal/ Leave to Appeal from a judgement of the Provincial High Court of Colombo dated 23rd August 2017 (in appeal No. HCALT 83/2014), in terms of Section 31DD (1) of the Industrial Disputes Act No. 32 of 1990 and the High Courts of the Provinces (Special Provisions) Act No. 19 of 1990 read with the Rules of the Supreme Court

SC Appeal No: 228/2017

SC Application No: SC/HC/LA 92/17

HC (Appeal) No. HC ALT 83/2014

LT Application No: 01/Add/19/2014

W.K.P.I. Rodrigo,

No. 82/10, Baptist Road,

Pitakotte, Kotte.

APPLICANT

-VS-

Central Engineering Consultancy Bureau,

No. 415, Bauddhaloka Mawatha,

Colombo 07.

RESPONDENT

AND BETWEEN

W.K.P.I. Rodrigo,

No. 82/10, Baptist Road,

Pitakotte, Kotte.

APPLICANT-APPELLANT

-VS-

Central Engineering Consultancy Bureau,

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Colombo 07

RESPONDENT-RESPONDENT

AND NOW BETWEEN

W.K.P.I. Rodrigo,

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APPLICANT-APPELLANT-APPELLANT

-VS-

Central Engineering Consultancy Bureau,

No. 415, Bauddhaloka Mawatha,

Colombo 07

RESPONDENT- RESPONDENT-RESPONDENT

BEFORE : **JAYANTHA JAYASURIYA, PC, CJ.**
MURDU N.B. FERNANDO, PC, J.
S. THURAIRAJA, PC, J.

COUNSEL : Applicant – Appellant – Appellant appears in person.
Indunil Bandara instructed by S.H.H.C.U. Senanayake and R. Rizwan for the Respondent- Respondent - Respondent

ARGUED ON : 24th June 2020.

WRITTEN SUBMISSIONS : Applicant-Appellant-Appellant on the 3rd of January 2018, 25th June 2020.

Respondent-Respondent-Respondent on 14th of February 2018

DECIDED ON : 02nd October 2020.

S. THURAIRAJA, PC, J.

I find it pertinent to establish the facts of the case prior to addressing the issues before us. The employee W.K.P.I Rodrigo i.e. Applicant – Appellant – Appellant, (hereinafter referred to as Employee – Appellant) was recruited by Central Engineering Consultancy Bureau i.e. Respondent – Respondent – Respondent (hereinafter referred to as Employer – Respondent) as a Civil Engineer Grade D1, in January 1986. The Employee – Appellant was suspended on a disciplinary issue on the 26th of August 2011, was found guilty upon the conclusion of the disciplinary inquiry and was terminated from employment on the 14th of October 2013.

Being aggrieved with the termination of employment, the Employee – Appellant filed a fundamental rights application in the Supreme Court bearing No. SC FR 395/2013 against the Employer – Respondent by petition dated 18.11.2013 alleging that the termination of his services was a breach of his fundamental rights enshrined in Article 12(1), 12(2) and 14(1) (g) of the Constitution. Subsequently the Employee – Appellant filed an application against the Employer – Respondent in the Labour Tribunal of Colombo on the 17.03.2014 (Application No. 01/Add/19/2014) challenging the termination of his services.

The Employer – Respondent filed its answer and raised the preliminary objection under Section 31 B (5) of the Industrial Disputes Act No.43 of 1950 (as amended), that the Employee – Appellant could not maintain an application before the Labour Tribunal due to the fact that he had first filed a fundamental rights application before the Supreme Court.

After the preliminary objection was raised, the learned President of the Labour Tribunal asked both parties to file written submissions. Thereafter the preliminary objection was upheld and the Employee – Appellant's application was dismissed.

Being dissatisfied with the order dated 03.09.2014 of the Labour Tribunal, the Employee – Appellant appealed to the High Court of the Western Province Holden in Colombo (Appeal No. HCALT 83/2014 dated 01.10.2014). The learned Judge of the High Court upheld the order of the Labour Tribunal and dismissed the appeal of the Employee – Appellant.

Being aggrieved with the said Order of the High Court, the Employee – Appellant preferred an application for leave to appeal to the Supreme Court and leave to appeal was granted on the questions of law set out in paragraph 13 (a) to (f) of the petition.

Previously, this matter was heard before a bench comprising of Hon. Chief Justice Jayantha Jayasuriya, PC, late Hon. Justice Prasanna Jayawardane, PC and myself on 17/07/2019. The Counsel for the Employee – Appellant, Geoffrey Alagratnam PC

submitted to Court detailed and comprehensive written submissions and made extensive oral submissions on behalf of the Employee – Appellant. When this case was recalled for argument the Employee – Appellant appeared in person and relied on the written submissions made on behalf of him on 03/08/2018. As this matter was previously heard, I have had the benefit of engaging in extensive discussions with my late brother regarding various issues in this matter and wish to acknowledge his invaluable contribution which was of immense help for me to capture all salient features and develop this judgment.

The learned Presidents Counsel for the Employee – Appellant submitted that the petitioner's appeal would be confined to three questions of law. They are as follows;

(a) *Did the learned High Court Judge err in law in not appreciating the scope and purpose and/ or wording of*
A – Section 31 B (3) and/or
B – Section 31 B (5) of the Industrial Disputes Act?
(b) *Did the learned High Court Judge err in holding that two cases cannot be filed on the same incident?*
(c) *Did the learned High Court Judge err in law in upholding the Order of the Labour Tribunal on the grounds stated and in deciding to dismiss the Application and petition filed by the Petitioner?*

The issue of law to be decided in this appeal is whether the provisions of section **31B (5)** of the Industrial Disputes Act No. 43 of 1950, as amended, debar the Employee – Appellant from maintaining his application to the Labour Tribunal against the termination of his services by the Employer - Respondent, for the reason that the Employee – Appellant had previously filed a fundamental rights application No. SC FR 395/2013 in this Court claiming that the said termination of his services by the Employer - Respondent violated his fundamental rights guaranteed by Articles **12 (1)**, **12 (2)** and **14 (1) (g)** of the Constitution.

The Counsel for the Employer - Respondent, relying on Section **31B (5)**, submitted that the Employee – Appellant is precluded from filing an application before the Labour Tribunal on the ground that he had first filed a Fundamental Rights Application bearing No. SC FR 395/2013. He submitted that although an employee can challenge termination of his services in several forums including the Labour Tribunal, District Court and Supreme Court, he cannot seek legal remedies from multiple forums in respect of the same issue / dispute (i.e. the termination of services).

Section 31 B (5) of the Industrial Disputes Act is reproduced below for easy reference.

Section 31 B (5)

"*Where an application under subsection (1) is entertained by a labour tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1)"*

The determination of this question requires us to ascertain the intention and purpose of the Legislature when it enacted section **31B (5)** and, in that light, to identify the proper scope of section **31B (5)**. Doing so will require an examination of the background to the introduction of Part IVA of the Act which contains the provisions relating to Labour Tribunals, including section **31B (5)**. Part IVA was introduced by the Industrial Disputes (Amendment) Act No. 62 of 1957. Part IVA initially had four sections - *ie:* sections **31A**, **31B**, **31C** and **31D**. These sections have been subjected to a few amendments since 1957. Further, new sections **31DD**, **31DDD** [later repealed] and **31DDDD** were added to Part IVA, by other Amendments to the Industrial Disputes Act.

As indicated in its long title, the Industrial Disputes Act was enacted in 1950 with the aim of preventing, investigating and settling industrial disputes and for matters connected therewith or incidental thereto. It has been long recognised that the overall purpose of the Act is to maintain and promote industrial peace. Thus, in ***Colombo***

Appothecaries Co. Ltd Vs. Wijesooriya [70 NLR 481 at p. 490], G.P.A. Silva J said that *".....there can be hardly any doubt-that the sole object of the Act is the promotion and maintenance of industrial peace."* and Tennekoon J, as he then was, observed [at p.507], *"It has been said frequently, and quite recently reiterated by their Lordships of the Privy Council that the purpose and object of the Act is the maintenance and promotion of industrial peace ....."* .

In its original form, the Act provided, *inter alia*, for the Minister to refer an industrial dispute to an Industrial Court or to Arbitration, for settlement. There was no provision for a workman who was aggrieved by the termination of his services by his employer, to unilaterally seek relief under the Act. Instead, he had to obtain the intervention of the Minister to seek relief under the Act. That *lacuna* was rectified with the enactment of the aforesaid Industrial Disputes (Amendment) Act No. 62 of 1957 which introduced a new Part IVA to the Act containing provisions for the establishment of Labour Tribunals as a special forum established by the State to enable workmen to seek relief in instances where they complain of a termination of their services. As eloquently explained by Lord Guest and Lord Devlin in their renowned dissenting judgment in the Privy Council decision of ***The United Engineering Workers Union vs. Devanayagam*** [69 NLR 289 at p.304-305]

> *"The Act thus employed the known ways of settling the ordinary trade dispute. But it did not include any simple way of remedying a grievance which an individual workman might have against his employer. Suppose, for example, that a workman was dismissed with such notice as the common law thinks reasonable but which a fair-minded employer nowadays probably accepts as inadequate; or suppose he was dismissed because of reduction in the labour force but without the ex gratia payment which a reasonably generous employer would nowadays think appropriate. The aggrieved workman in such a case could seek the help of his trade union which could threaten industrial action. Then there might be a reference which might result in the workman obtaining better treatment and in an award to govern similar cases in the future ... A swift way of dealing with an*

individual grievance without calling out the whole force of trade unionism would certainly help to promote industrial peace. It was supplied by an amending Act of 1957. This Act enlarged the definition of industrial dispute so as to make it clear that it included a dispute or difference between an individual employer and an individual workman. It inserted into the Act a new part, Part IV A, entitled `Labour Tribunals'. The function of the Labour Tribunal is to entertain applications by a workman for relief or redress in respect of such matters relating to the terms of employment or the conditions of labour as may be prescribed. The particular matters specified in the Act are those which we have already mentioned by way of example, namely, questions arising out of the termination of the workman's services and relating to gratuities or other benefits payable on termination. On such matters the Tribunal is to make such order as may appear to it to be just and equitable."

Identifying the purpose for which the Legislature introduced Labour Tribunals in 1957, S.R. De Silva, the renowned writer on Industrial Law, states [The Legal Framework of Industrial Relations at p. 293] *"In 1957 the State, by amending legislation, created bodies known as labour tribunals to ensure job security by safeguarding against involuntary termination of employment except for good cause."*.

Thus, **31A (1)** of the Act, post the aforesaid amendment, empowers the Minister to establish Labour Tribunals. Next, sections **31B (1) (*a*), (*b*)** and **(*c*)** provide that a workman [or a trade union on his behalf] may make a written application to a Labour Tribunal for relief or redress in respect of the termination of his services and/or the gratuity or benefits due to him from his employer upon the termination of his services. [Section **31B (1) (*d*)** states that a workman may make and application to a Labour Tribunal in respect of such other matters as the Minister may prescribe. However, that provision is not relevant to the question before us].

Thereafter, section **31C (1)** states that, when such an application is made to it, it shall be the duty of the Labour Tribunal to make inquiries into that application and, when

doing so, to hear all such evidence as the Labour Tribunal considers necessary and, thereafter, make an Order which the Labour Tribunal considers is just and equitable. Section **31B (4)** read with section **31C (1)** make it clear that a Labour Tribunal is not limited by the terms and conditions of the contract of service between the workman and the employer when making an Order which it considers to be just and equitable. Thus, for example, section **33 (1) *(b)*** in Part VI of the Act which contains the *"General"* provisions applicable to the Act, states that a Labour Tribunal is empowered, where it considers it appropriate, to order that a workman whose services have been terminated, be reinstated in service even though, as is well known, the relief of specific performance is unavailable in a contract for personal services other than in a few exceptional circumstances.

These provisions show that the Legislature established Labour Tribunals with the intention of giving workmen whose services had been terminated by their employer, a special forum which was constituted to determine applications against the employer for relief in respect of the termination of services and to ensure that a workman could make such an application with relative ease. It is also evident that, in order to achieve this intention, the Legislature considered it necessary to invest Labour Tribunals with substantial powers and the discretion to grant relief on a just and equitable basis, untrammelled by the terms and conditions of the contract of services and the common law of master and servant.

However, a perusal of the other provisions in Part IVA of the Act, make it clear that, when establishing Labour Tribunals, the Legislature kept in mind the overall purpose of the Act - which was to maintain and promote industrial peace for the common good of society. Thus, some of the provisions in Part IVA of the Act demonstrate that Parliament took care to ensure that, while giving workmen the right to `directly' make an application to a Labour Tribunal seeking relief in respect of the termination of services by their employers, that right is not permitted to interrupt or prejudice other proceedings in which matters relevant to the application are being considered. This safeguard is seen in section **31B (2) (*a*)**, section **31B (3) (*a*)** and **section 31B (3) (*b*)** of the Act.

Thus, section **31B (2) (*a*)** specifies that, where a Labour Tribunal is satisfied that the termination of services which is the subject matter of an application made to it, is under discussion between the employer-respondent and the trade union of which the workman is a member, the Labour Tribunal must suspend hearing the application until the conclusion of those discussions and, in the event those discussions lead to a settlement, the Labour Tribunal must make Order in terms of that settlement. It is also implicit in section **31B (2) (*a*)** that, even if the discussions do not end in a settlement, a Labour Tribunal should consider what transpired during such discussions when it makes its final Order.

On broadly comparable lines, section **31B (3) (*a*)** and section **31B (3) (*b*)** specify that: **(*a*)** where a Labour Tribunal is of the opinion that an application made to it relates to any matter which is similar to or identical with a matter constituting or included in an industrial dispute in respect of which there is an inquiry proceeding in terms of the Act and to which the same employer is a party; or, **(*b*)** where a Labour Tribunal is of the opinion that the facts affecting an application made to it are facts which affect any other proceeding under any other law; the Labour Tribunal must suspend hearing the application until the conclusion of that inquiry or proceeding and, thereafter, resume hearing the application having regard to the award or decision of the inquiry or proceeding.

It is apparent that the aforesaid section **31B (2) (*a*)** and sections **31B (3) (*a*)** and **31B (3) (*b*)** are designed to ensure that the hearing of an application made to a Labour Tribunal does not run contrary to or prejudice: (i) related discussions between the same employer and a trade union of which the applicant is a member; or (ii) related inquiries, under and in terms of the Act, into an industrial dispute, to which the same employer is a party; or (iii) proceedings under any other law which are relevant to that application. In other words, these three statutory provisions seek to harmonize a Labour Tribunal's hearing of an application made to it with other directly relevant proceedings and, thereby,

promote the overall purpose of the Act, which is to maintain and promote industrial peace for the common good of society.

At the same time, it is evident from two other provisions in Part IVA of Act - namely, section **31B (2) (*b*)** and section **31B (5)** - that, when the Legislature introduced Labour Tribunals, it wished to ensure that the right it gave any workman who is aggrieved by the termination of his services, to make an application to a Labour Tribunal with relative ease, should not permit that workman to obtain relief in respect of the termination of his services from *both* a Labour Tribunal and also from court or other forum which is empowered by law to grant relief to him in respect of the same termination of his services. Needless to say, permitting a workman to obtain relief in respect of the termination of his services from *both* a Labour Tribunal and also from court or other forum would not be conducive to the overall purpose of the Act, which is to maintain and promote industrial peace for the common good of society.

Accordingly, section **31B (2) (*b*)** specifies that, in cases where the Labour Tribunal is satisfied that the subject matter of an application made to it constitutes or forms part of an industrial dispute which is already before an Industrial Court or an Arbitration under the Act, the Labour Tribunal must dismiss that application without prejudice to those proceedings before the Industrial Court or Arbitration. It is apparent that this provision is founded on the policy that a Labour Tribunal should not proceed, under and in terms of the Industrial Disputes Act, to separately hear and determine an Industrial Dispute which has been previously referred by the Commissioner of Labour or the Minister for settlement to Arbitration or to an Industrial Court under the provisions of sections **3** or **4** of the same Act.

To turn to section **31B (5)**, it is evident that this statutory provision has two limbs. The first limb of section **31B (5)** states that a workman who has previously made an application to a Labour Tribunal in respect of the termination of his services and has had that application decided by the Labour Tribunal, *"shall not be entitled to any other legal remedy in respect of the matter to which that application relates"*. Conversely, the second

limb of section **31B (5)** states that where a workman has *"first resorted to* any *other legal remedy, he shall not thereafter be entitled to"* the remedy available under section **31B (1)** of the Act - *ie:* the remedy available in an application to a Labour Tribunal.

It is evident that the first limb of section **31B (5)** has the effect of ousting the jurisdiction of the courts [and other *fora* which are statutorily authorised to determine disputes relating to the termination of services of a workman] if the circumstances referred to in the first limb exist. In this regard, it is a long established and salutary rule that statutory provisions can have the effect of ousting the jurisdiction of the courts only if there is clear and unambiguous language to establish such an ouster. Thus, MAXWELL [3rd ed. at p.153] refers to

> *"the well-known rule that a statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect."*.

It follows that first limb of section **31B (5)** should be given a restrictive interpretation which is confined to the specific circumstances described in this statutory provision. Next, it is evident that the second limb of section **31B (5)** has the effect of ousting the jurisdiction of the Labour Tribunal if the circumstances referred to in that statutory provision exist. However, the *rationale* and policy considerations which brought about the introduction of Labour Tribunals in 1957, which were mentioned earlier, dictate that the right of workmen to invoke the jurisdiction of a Labour Tribunal must not be restricted beyond the proper scope of the second limb of **section 31B (5).** Thus, it follows that the second limb of section **31B (5)** also should be given a restrictive interpretation which is confined to the specific circumstances described in that statutory provision.

The effect of the first limb of section **31B (5)** is clear as it explicitly precludes a workman from obtaining a determination by a Labour Tribunal of his application for relief or redress in respect of the termination of his services and, thereafter, proceeding to obtain another legal remedy in respect of the same subject matter from any other forum, whether that forum be a court of law, or a forum constituted under any of the provisions

of the Act other than those in Part IVA of the Act, or any other forum which has the legal authority to determine such complaints.

Thus, in ***Devanayagam*** [at p. 305], Lord Guest and Lord Devlin appear to have had the first limb of section **31B (5)** in mind when Their Lordships commented that

> *"The workman has to make his choice between the remedy afforded by the Act and any other legal remedy he may have; he cannot seek both. If he goes to the Tribunal, the Tribunal's order settles the matter and is not to be called in question in any court except that there may be an appeal to the Supreme Court on a question of law."*.

This view is reinforced by the statement [at p.313] made by Lord Guest and Lord Devlin in relation to section **31B (2) (*b*)** of the Act, that a dismissal of an application to a Labour Tribunal under that provision

> *"does not preclude the workman from pursuing his rights at common law since under **s. 31B (5)** they are excluded only where proceedings before the Tribunal are taken and concluded."*.

It is apparent that the question of whether the first limb of section **31B (5)** will apply and debar a workman from maintaining an action in a court [or an application to another forum], by reason of the fact that the same workman has previously received a determination in respect of the same subject matter in an application made by him to a Labour Tribunal, is a question that will have to be decided by that court [or other forum]. It is not a question that will come to the attention of a Labour Tribunal. I would also state here that, apart from section **31B (5)** being designed to maintain and promote industrial peace, it is self-evident that the first limb of section **31B (5)** is also founded on the principle of *Res Judicata*.

The second limb of section **31B (5)** states that, where a workman *"has first resorted to any other legal remedy, he shall not thereafter be entitled to"* make an application to a Labour Tribunal under section **31B (1)** of the Act. The Act does not define what is meant by the phrase *"legal remedy"*. As discussed above, the phrase *"any other legal remedy"* as

used in the *first limb* of section **31B (5),** means a legal remedy subsequently sought from any forum other than a Labour Tribunal, to obtain relief or redress in respect of the subject matter of the workman's previous application to a Labour Tribunal made under section **31B (1)** of the Act. However, unlike in the first limb of section 31B (5), in which the words "*in respect of the matter to which that application relates"* follow up and accompany the phrase "any other legal remedy", the said phrase as used in the second limb of section 31B (5) stands alone without any accompanying words to clarify its meaning. Consequently, it is necessary to identify what the Legislature meant when it used the phrase *"any other legal remedy"* in the second limb of section **31B (5)**.

In circumstances such as this, it is an established rule of statutory interpretation that a Court is entitled to look at the other related provisions of the Act to understand the context in which the phrase *"any other legal remedy"* has been used in the second limb of section **31B (5)** and, thereby, identify the correct meaning of the phrase for the purposes of section **31B (5).** As Bindra [INTERPRETATION OF STATUTES 7th ed. at p.301] states,

> *"It is, however, equally well settled that the meaning of the words used in any portion of the statute must depend on the context in which they are placed. Moreover, in interpreting an enactment all its parts must be construed together as forming one whole and it is not in accordance with sound principles of construction to consider one section, or group of sections alone, divorced from the rest of the statute. Further, so far as possible, the construction must be placed upon words used in any part of the statute which makes them consistent with remaining provisions and with the intention of the Legislature to be derived from a consideration of the enactment."*

When the approach set out above is used, it is evident that the phrase *"any other legal remedy"* in the second limb of section **31B (5)** echoes and should be understood to have the same meaning as it has in the first limb of section **31B (5)**. Thus, it can be concluded with certainty that the phrase *"any other legal remedy"* in the second limb of section **31B (5)** is limited in its meaning to *"any other legal remedy"* which the workman

has *previously* sought in a court or other forum in respect of the termination of his services *and* which had the same subject matter as his subsequent application to the Labour Tribunal.

Consequently, the second limb of section **31B (5)** applies only in instances where the *"other legal remedy"* sought by the workman in any another forum [whether that forum be a court, or a forum constituted under any of the provisions of the Act other than those in Part IVA of the Act, or any other forum which has the legal authority to determine such complaints]: (i) covered the same or similar ground and had the same or similar scope; *and* (ii) sought the same or similar substantive reliefs, as his subsequent application to a Labour Tribunal. For the reasons referred to earlier, this conclusion can be properly reached upon reading the provisions of the Act and applying the aforesaid established rule of statutory interpretation. Thus, S.R. De Silva has, referring to the second limb of section 31B (5), stated [at p.345], *"The principle of res judicata enshrined in this provision operates* ***only where the matter in dispute is the same*** *in both remedies sought by the workman."*. [emphasis added by me].

I would mention a third limitation/qualification to the circumstances in which the second limb of section **31B (5)** may be properly invoked. To my mind, this limitation follows as a corollary to the conclusion set out above. That third limitation is: the *"other legal remedy"* sought previously by the workman in a court or other forum [which has the legal authority to determine such complaints]; and the workman's subsequent application to the Labour Tribunal; would both have to be decided upon the core issue of whether the termination of the workman's services by the employer was done for good cause.

Inevitably, there might be some difference between the principles which would be applied by such court or other forum when deciding this core issue, and the principles that would be applied by a Labour Tribunal when it decides this core issue. Consequently, taking a view that the principles that are to be applied must by the court or other forum and by the Labour Tribunal, must be the *same*, will render section **31B (5)** nugatory. To illustrate by way of an example, a court of law will decide by applying the common law

and the terms and conditions of the contract of services when deciding an action relating to a workman's claim for relief consequent to the termination of his services, while a Labour Tribunal will decide an application made to it, by testing whether the termination of services was just and equitable without being confined by the terms and conditions of the contract of services. Hence, although the two forums need not necessarily apply the *same* principles for the second limb of section **31B (5)** to come into effect, the application of this provision is qualified/limited if the core issue before the court or other forum and the Labour Tribunal relates to whether the termination of the workman's' services by the employer was done for good cause, according to the principles which are to be applied by the court or other forum. When voicing this further limitation, I am fortified by broadly comparable views expressed by Tilakawardane J in ***Tri-Star Apparels Exports (Pvt) Ltd vs. Gajanayake*** [SC Appeal No. 85/2003 decided on 19th October 2004 at p.12-13] and by Sisira De Abrew J in ***Sri Lanka State Plantations Corporation vs. Dharmawansa***, [2006 1 SLR 346 at p.348-349]. These decisions are discussed later on.

It also appears that, in order for the second limb of section **31B (5)** to apply, there should not be a significant disparity between the procedure followed by the court or other forum when it determines an action or application in which a workman seeks a legal remedy is respect of termination of his services, and the procedure followed by a Labour Tribunal when it determines an application made to it by a workman. Views to this effect were expressed by G.P.S. De Silva J, as he then was, in ***Ceylon Tobacco Co. Ltd vs. Illangasinghe*** [1986 1 SLR 1 at p.4-5] and by Tilakawardane J in ***Tri-Star Apparels Exports (Pvt) Ltd vs. Gajanayake*** [at p.13-14]. Thus, if there is a material disparity or divergence between the aforesaid criteria in the *"other legal remedy"* sought by the workman and in his subsequent application to the Labour Tribunal, the second limb of section **31B (5)** cannot be applied. An attempt to apply the second section **31B (5)** even where there is a material disparity or divergence of the nature referred to in the preceding sentence, will require unduly stretching the intended effect of the second limb of section **31B (5)** beyond its proper scope, and, also, be illogical and inequitable.

Further, as I mentioned earlier, Labour Tribunals were introduced by the Legislature with the intention of providing a special forum in which a workman, who was aggrieved by the termination of his services by his employer, could seek relief or redress with relative ease of procedure. Consequently, enlarging the scope of the second limb of section **31B (5)** beyond its necessary limits which were formulated in the preceding paragraphs, will run contrary to that intention of the Legislature.

An examination of the previous decisions on the effect of section **31B (5)**, endorses the conclusions reached above. Firstly, I will consider the decisions cited by learned President's Counsel for the workman-appellant and learned counsel for the Employer-Respondent, in the course of their submissions to us. The decisions cited by learned counsel are: ***Richard Pieris and Co. Ltd. vs. Wijesiriwardena*** [62 NLR 233], ***The United Engineering Workers Union vs. Devanayagam, Mendis vs. RVDB*** [80 CLW 49], ***Ceylon Tobacco Co. Ltd vs. Illangasinghe, Construction Liason Ltd vs. Fernando*** [1988 II CALR 122], ***Independent Newspapers Ltd vs. Commercial and Industrial Workers' Union*** [1997 3 SLR 197] and ***Fernando vs. Standard Chartered Bank*** [2011 BALR 242].

In the ***Richard Pieris and Co. Ltd.*** case, T.S. Fernando J was of the view that the phrase *"any other legal remedy"* in section **31B (5)** refers to an action under the common law or to recourse to a specific statutory procedure in order to claim monies or benefits which are due to the workman from his employer upon the termination of employment. In ***Devanayagam'***s case, it is clear that Lord Guest and Lord Devlin considered that the phrase *"any other legal remedy"* in the first limb of section **31B (5)** refers to an action filed in a civil court under the common law. That view was shared by Viscount Dilhorne, who, referring to the phrase *"any other legal remedy"* in section 31B (5), said [at p.301] that a workman who makes an application to a Labour Tribunal

> "*... will get what the Tribunal thinks just and equitable and he can apply even when there has been no breach of contract. If he sues in the Courts he will have to show that he has a cause of action and he can only get what is legally due to him*."

Viscount Dilhorne also made it clear that section 31B (5) will apply only where there is a "duplication of claims by a workman".

The same approach will apply to the second limb of section **31B (5)**; in ***Mendis vs. RVDB***, De Kretser J considered that the second limb of section **31B (5)** could be applied only where the *"other legal remedy"* sought previously by the workman was *"in connection with the same subject-matter"* of the workman's subsequent application to the Labour Tribunal; in the ***Ceylon Tobacco Co. Ltd*** case, which concerned a previous application made by the workman under the Termination of Employment of Workmen (Special Provisions) Act and a subsequent application made by him to the Labour Tribunal, G.P.S. De Silva J, when His Lordship was in the Court of Appeal, based his decision that the second limb of section **31B (5)** applies, on the fact that the jurisdiction and powers to grant relief conferred upon Commissioner of Labour by the Termination of Employment of Workmen (Special Provisions) Act and the jurisdiction and powers to grant relief conferred on a Labour Tribunal by Part IVA of the Industrial Disputed Act *"are very similar"* and, further, that the procedure before both *fora* were similar. It is also evident that De Silva J considered that the phrase *"other legal remedy"* in the second limb of section **31B (5)** referred to either an action filed in a civil court under the common law or to a recourse to a specific statutory procedure; the ***Construction Liason Ltd*** case concerned similar facts and the Court of Appeal followed its previous decision in the ***Ceylon Tobacco Co. Ltd*** case; the ***Independent Newspapers Ltd*** case also concerned proceedings under the provisions of the Termination of Employment of Workmen (Special Provisions) Act and a subsequent application by the workman to a Labour Tribunal. Dheeraratne J held that the second limb of section **31B (5)** was inapplicable because the application under the Termination of Employment of Workmen (Special Provisions) Act had been made by the *employer* and *not* by the workman; the main questions before the Supreme Court in ***Fernando vs. Standard Chartered Bank*** dealt with whether the pleadings complied with provisions of the Civil Procedure Code. In any event, there was no application made by the workman to the Labour Tribunal. Accordingly, this decision is of little relevance to the issue of law which is before us in this appeal.

In addition to the above cases cited by learned counsel, the following decisions should also be considered: ***Tri-Star Apparels Exports (Pvt) Ltd vs. Gajanayake***, ***Sri Lanka State Plantations Corporation vs. Dharmawansa***, ***Ceylon Estate Staff Union vs. The Superintendent, Sunderland Estate*** [2012 BALR 9] and ***Colombo Muncipal Council Employees Co-Operative Thrift and Savings Society vs. Hettiarachchi*** [SC Appeal No. 136/2009 decided on 25th June 2012]. I have not been able to locate any other decisions which consider section **31B (5)**.

In the ***Tri-Star Apparels Exports (Pvt) Ltd*** case, the workman had instituted an action in the District Court praying for relief in respect of the termination of his services and, later, made an application to the Labour Tribunal. Tilakawardane J held that, in the circumstances of that case, the second limb of section **31B (5)** was inapplicable. Her Ladyship held that the second limb of section **31B (5)** could be invoked only where the application to the Labour Tribunal *"relates to* ***the same matter*** *which was the subject matter of the action instituted in the District Court"* [emphasis added by me]. Further, the learned Judge was of the view that section **31B (5)** could not be applied if there was difference between the *"sphere or scope"* of the *"other remedy"* sought by the workman and his application to the Labour Tribunal. Tilakawardane J was of the view that section **31B (5)** cannot be applied if there is a difference between the principles which would be applied by a court or other forum when deciding whether a workman is entitled to a *"legal remedy"* which the workman has sought from that forum in respect of the termination of his services, and the principles that would be applied by a Labour Tribunal when it decided a workman's' application. The learned judge considered that a significant difference between the procedure followed by a court or other forum when deciding a *"legal remedy"* in respect of the termination of a workman's services and the procedure followed by a Labour Tribunal when it decides a workman's' application, would deter the applicability of section **31B (5)**. Finally, Tilakawardane J recognised that a Court or Tribunal should be reluctant to apply the provisions of section **31B (5)** in a way which will unreasonably *"deprive"* the workman of the *"procedural as well as the substantive*

advantages" and the right to seek *"equitable relief"* granted to him by the Industrial Disputes Act.

In the ***Sri Lanka State Plantations Corporation*** case, Sisira De Abrew J, when His Lordship was in the Court of Appeal, held that a previous application made by the workman to the Court of Appeal for the issue of a writ, cannot sustain an objection, under section **31B (5)**, to the workman maintaining a subsequent application to the Labour Tribunal, because the application for a writ is to be decided upon *"the principles of administrative law"* while the application to the Labour Tribunal will be decided upon *"the principles of equity."*. His Lordship stated [at p.349]

> *"..... I hold that seeking a remedy under the Administrative Law does not prevent an employee from seeking relief under the Industrial Disputes Act."* and *"I am of the view that the provisions of section 31B (5) of the Industrial Disputes Act does not operate, in the circumstances of this case, as a bar to the maintainability of the case filed in the Labour Tribunal."*.

Thus, it is clear that Sisira De Abrew J was of the view that a difference between the principles applied by a forum from which the workman has sought a remedy and the principles which will be applied by a Labour Tribunal, will exclude the application of section **31B (5)**.

Finally, in the ***Colombo Muncipal Council Employees Co-Operative Thrift and Savings Society*** case, Bandaranayake CJ was of the view that section **31B (5)** could apply only if the *"other remedy"* sought by the workman and his application to the Labour Tribunal are *"in respect of the same matter or substantially the same matter."*

I should also mention here that, although the report of the decision in ***Ceylon Estate Staff Union vs. The Superintendent, Sunderland Estate*** contains a statement [at p.10] that *"S. **31B (5)** requires the Tribunal to lay by cases filed before it, if proceedings are being taken in another forum regarding the same matter"*, a perusal of the judgment shows that the learned judge was considering how a Labour Tribunal should act when there was

a pending prosecution of the workman in the Magistrate's Court for an offence which was related to the termination of the workman's employment. That fact and the reference to the Labour Tribunal being required to *"lay by"* the application made to it, leads me to think that there is a typographical error in the report and that the learned judge was, in fact, referring to section **31B (3) (*b*)** which requires a Labour Tribunal to suspend hearing an application made to it where the facts affecting that application are facts which affect any other proceeding under any other law. For those reasons, I am not inclined to rely on the report of the decision in **Ceylon Estate Staff Union vs. The Superintendent, Sunderland Estate** when determining the issue of law before us.

I have taken some pains to refer to all these decisions in order to explain why I said earlier that these decisions fortify the conclusion I reached with regard to the limitations on the circumstances in which the second limb of section **31B (5)** can be properly invoked. Thus, if I am to reiterate the conclusion reached earlier, which, as seen from the preceding discussion, is endorsed by the reasoning applied in several previous decisions, the criteria upon which the second limb of section **31B (5)** can be properly applied are that: (i) the action/application by the workman in the court or other forum must cover the same or similar ground as the application to the Labour Tribunal and have the same or similar scope; (ii) the action/application by the workman in the court or other forum should seek the same or similar substantive reliefs as the application to the Labour Tribunal; (iii) both the action/application by the workman in the other forum and the workman's application to the Labour Tribunal should be decided upon the core issue of whether the termination of the workman's' services by the employer was done for good cause, according to the principles which are to be applied by the court or other forum; and (iv) there should not be a significant disparity between the procedure followed by the court or other forum and the procedure followed by a Labour Tribunal.

In my view, the second limb of section **31B (5)** can be applied only if all these four criteria or, at least, a sufficient number of them are met, so as to satisfy the Labour Tribunal that there is no material disparity or divergence between the previous action/application

made by the workman to a court of other forum and the subsequent application made by the same workman to the Labor Tribunal.

I should mention here that, while the first limb of section **31B (5)** expressly states that it will apply to debar the workman from being entitled to a legal remedy from another forum only where a Labour Tribunal had previously determined an application he had made to it, the second limb of section **31B (5)** says that where a workman has *"first resorted to any other legal remedy"* in respect of the termination of his services, he shall not be entitled to make an application on the same subject matter to a Labour Tribunal. The phrase *"first resorted to"* has not been defined in the Act. There has been a difference of opinion on what is meant by the phrase *"first resorted to"* in the second limb of section **31B (5)**. Hence, before parting with the scope and effect of section **31B (5)**, the following question should be examined: namely, whether the phrase in the second limb of section **31B (5)** which states that where a workman *"has first resorted to any other legal remedy, he shall not thereafter be entitled"* to make an application to a Labour Tribunal, has the effect of denying a workman the right to maintain an application to a Labour Tribunal *only* where he has received a *determination* from the court or other forum in which he has previously filed an action/application in respect of the termination of his services; *or*, whether second limb of section **31B (5)** has the effect of denying a workman the right to maintain an application to a Labour Tribunal immediately upon the workman *commencing* proceedings in a court or forum other than a Labour Tribunal, despite him *not* having received a determination from that court or other forum.

In this regard, in ***Mendis vs. RVDB***, which was a decision of this Court, the workman had instituted an action in the District Court against his employer, seeking reliefs in respect of the termination of his services. The workman later made an application to the Labour Tribunal. The employer objected, under the second limb of section **31B (5)**, to the workman maintaining the application to the Labour Tribunal. De Kretser J held that the second limb of section **31B (5)** applies to debar an application to a Labour Tribunal *only* where there has been a final determination of the *"other legal remedy"* previously sought

by the workman from the court. His Lordship was of the view that the words *"resorted to"* used in the second limb of section **31B (5)** should be interpreted to mean the obtaining of a conclusive determination by the court and not merely the institution of an action in court.

However, in the subsequent decision of the Court of Appeal in ***Ceylon Tobacco Co. Ltd vs. Illangasinghe***, De Silva J stated [at p. 5-6] that he was unable to agree with the view taken in ***Mendis vs. RVDB***. His Lordship was of the view that the words *"resorted to"* should be given their ordinary meaning and be held to mean the act of commencing the other proceeding.

Thereafter, in ***Independent Newspapers Ltd vs. Commercial and Industrial Workers' Union***, which is a decision of this Court, Dheeraratne J did not refer to either ***Mendis vs. RVDB*** or ***Ceylon Tobacco Co. Ltd vs. Illangasinghe***. His Lordship was of the view [at p.199] that the word *"resorted"* in the second limb of section **31B (5)** should be given the *"ordinary meanings of that word"* and be taken to mean the commencement of proceedings in another forum and not the obtaining of a determination from that other forum. However, as mentioned earlier, Dheeraratne J's decision in ***Independent Newspapers Ltd vs. Commercial and Industrial Workers' Union*** was grounded on the learned Judge's determination [at p.199] that the workman had ***not*** *"first resorted to a legal remedy within the meaning of subsection* ***31B (5)****"*. Thus, Justice DheeraratneJ's aforesaid observation on the meaning of the word *"resorted"* in the second limb of section **31B (5)**, was made *obiter*.

With the greatest respect to the decision of the Court of Appeal in the ***Ceylon Tobacco Co. Ltd*** case and to the aforesaid *obiter* observation by Dheeraratne J in this Court in the ***Independent Newspapers Ltd*** case, I am unable to agree with the view that the words *"first resorted to any other legal remedy"* in the second limb of section **31B (5)** mean the mere *commencement* of proceedings in another forum.

Instead, I am of the view that: (i) in the absence of a definition in the Act of the phrase *"where he has first resorted to any other legal remedy"* or any of its component

parts; and (ii) upon an application of the established rule of statutory interpretation cited earlier; the phrase *"where he has first resorted to any other legal remedy,"* the workman shall not be thereafter entitled to make an application to a Labour Tribunal, in the second limb of section **31B (5)**, should be understood to have a meaning and effect which is on the same lines, *mutatis mutandis,* as the comparable phrase in the first limb of section **31B (5)**. As seen earlier, the first limb of section **31B (5)** states that, where a workman has made an application to a Labour Tribunal *"and proceedings thereon are taken* ***and concluded****, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates."* [emphasis added by me].

I see no logical reason which persuades me to think that the Legislature intended to apply *one* standard in the first limb of section **31B (5)** and limit the curtailment of a workman's right to maintain an action/application for a remedy in another forum only to instances where he has previously had an application to a Labour Tribunal finally *determined* by the Labour Tribunal; and to apply *another* and much harsher standard in the second limb of section **31B (5)** and curtail a workman the right to maintain an application to a Labour Tribunal merely because has had previously *commenced* proceedings, in another forum but has *not* yet received a *determination* from that other forum. In this connection, I do not think it can be reasonably said that a workman who chooses not to avail himself of the procedure available under Part IVA of the Act in the first instance, but later realises that he should resort to the provisions of Part IVA of the Act, should be penalised by debarring him from doing so *unless* he has received a *determination* from that other forum. I would add that debarring a workman from having access to a Labour Tribunal merely because he has, perhaps misguidedly, previously decided to refer his claim to another forum but has *not* received a determination from that forum, would go against the clear intention of the Legislature when it introduced Labour Tribunals in 1957.

Further, it has to be kept in mind that the ordinary meaning of the word *"resort"* in this context is defined in the SHORTER OXFORD DICTIONARY [5th ed. 2 at p.2550] as meaning *"Have recourse to something for aid, assistance, or as the means to an end"*, while the word *"remedy"* in this context is defined [at p.2526] as meaning *"Legal redress"*. Thus, it can be cogently contended that the ordinary meaning of the phrase *"where he has first resorted to any other legal remedy"* in the second limb of section **31B (5)**, is having obtained a *determination* from the other forum with regard to the legal redress [legal remedy] sought from it.

Accordingly, I am of the opinion that the words *"where he has first resorted to any other legal remedy"* in the second limb of section **31B (5)** should be understood in a manner comparable to the import of the first limb of section **31B (5)** - *ie:* as meaning, having first resorted to a legal remedy in a court or forum other than a Labour Tribunal and having had the *"proceedings thereon taken and concluded"* by that court or other forum. Thus, I am in respectful agreement with De Kretser J, when His Lordship stated in ***Mendis vs. RVDB*** stated [at p.50] *"It appears to me it is not the filing of the plaint or the application as the case may be that is the bar but the fact that there has been a final order or an adjudication on the remedy sought that operates as the bar to the seeking of another remedy in the same or any other forum. What is forbidden is the obtaining of more than one remedy in connection with the same subject-matter in separate proceedings and not the seeking of them"*.

It should be mentioned here that the decision in the ***Ceylon Tobacco Co. Ltd*** case is by the Court of Appeal and the aforesaid observation by Dheeraratne J in this Court in the ***Independent Newspapers Ltd*** case was made *obiter*. Thus, I would observe, with respect, that neither decision stands in the way of the view as set out by me in the preceding paragraph, which is fortified by the authority of the decision of this Court in ***Mendis vs. RVDB***.

When the second limb of section **31B (5)** is understood, as set out above, to mean that it debars a workman from obtaining a *determination* from a court or other forum of

an action or application in which he sought relief or redress from that court or other forum in respect of the termination of his services, and, thereafter, maintaining an application in a Labour Tribunal upon the same subject matter, it is self-evident that the second limb of section **31B (1)** is founded on the principle of *res judicate*, as observed by S.R. De Silva [at p.345]. That is, in addition to the fact that the second limb of section **31B (5)** had been designed to help maintain and promote industrial peace, as described earlier.

In this connection, although both the learned President of the Labour Tribunal and the learned High Court Judge correctly stated that the second limb of section **31B (5)** is founded on the principle of *res judicata*, they, nevertheless, proceeded to dismiss the workman-appellants' application to the Labour Tribunal on the ground that he had previously filed a fundamental rights application in this Court despite the fact that this Court had not determined that fundamental rights application. When they did so, both the learned President and the learned High Court Judge erred by overlooking the basic requirement that the principle of *res judicata* can operate only where a court or other body lawfully vested with the authority to determine a question has pronounced a final determination of that question, which is later made the subject matter of a subsequent proceeding in a court or other forum. It is self-evident that, when the principle of *res judicata* is to be applied to the second limb of section **31B (5)**, it will require that the words *"first resorted to any other legal remedy"* in the second limb of section **31B (5)** are taken to have the meaning and effect I have described in preceding paragraphs.

To conclude this aspect of the present judgment, it is my view that, in instances where an employer objects, under the second limb of section **31B (5)**, to a workman maintaining an application to a Labour Tribunal on the ground that the same workman has previously sought a legal remedy in a court or other forum and it is apparent that the workman has not yet received a determination from that court or other forum, the Labour Tribunal should examine whether the four criteria identified earlier, are met.

If the Labour Tribunal is of the view that these criteria are not sufficiently met and, therefore, there is a material disparity or divergence between the previous

action/application made by the workman to a court or other forum and the subsequent application made by the same workman to it, the Labour Tribunal should proceed to hear and determine the application made to it; unless the Labour Tribunal is, nevertheless, of the opinion that the facts affecting the application made to it are facts affecting the other proceeding and, therefore, this is a suitable case to act under and in terms of **31B (3) *(b*)** and suspend hearing the workman's application until the conclusion of the proceedings in the court or other forum and, thereafter, resume hearing the application and, when determining the application have regard to the determination reached in the other proceedings.

However, if the Labour Tribunal is satisfied that the aforesaid criteria are sufficiently met and that the proceedings in the court or other forum are still pending without a determination having being made by that court or other forum, the Labour Tribunal should suspend hearing the workman's application until a final determination is made in those proceedings. If a final determination is made by the court or other forum in those proceedings, the Labour Tribunal is entitled to act under the second limb of section **31B (5)** and terminate the application made to it since it is satisfied that the aforesaid criteria have been sufficiently met [*ie:* that there is no material disparity or divergence between the previous action/application made by the workman to a court or other forum and his subsequent application which is before the Labour Tribunal] and a final determination has now been made in that other proceeding. However, if the other proceedings end without a final determination being made, the Labour Tribunal should resume hearing the application made to it. In my view, the provisions in the second limb of section **31B (5)** read with **31B (3) *(b*)** give sufficient authority to the Labour Tribunal to act in this manner. Further, this approach would be consistent with the principle of *res judicata* which is inherent in the second limb of section **31B (5).**

It remains for me apply the criteria discussed earlier and determine whether the workman-appellant's fundamental rights application no. 395/2013 in this Court enabled

the application of the second limb of section **31B (5)** and the dismissal of the workman-appellant's subsequent application to the Labour Tribunal

In this regard, firstly, it is apparent that the fundamental rights application and the application to the Labour Tribunal do not cover the same or similar ground and do not have the same or similar scope. The fundamental rights application is founded on the workman-appellant's grievance that the employer-respondent [which is said to be an organ or entity of the State] has violated his fundamental rights guaranteed by Articles **12 (1), 12 (2) and 14 (1) (*g*)** of the Constitution. When determining a fundamental rights application, this Court focuses on its duty to protect fundamental rights guaranteed by the Constitution. The question before the Supreme Court is a matter of public law and its duty to uphold constitutional rights of persons, *vis-à-vis* the State. As was emphasised by Sharvananda J in ***Palihawadana v Attorney General*** [(1978) SLR Vol. 1 Page 65] the object of the Fundamental Rights Chapter

> *"Is to ensure the inviolability of certain basic rights by the state and its organs and to establish a society founded on principles of justice, equality and freedom."*

In contrast, the application to the Labour Tribunal is founded and confined within the employer-employee relationship and the Labour Tribunal will focus on the nature of the specific employer-employee relationship before it and ascertain whether the termination of services was just and equitable. It is a matter of private law. It is apt here to cite Chief Justice Sharvananda's observation [FUNDAMENTAL RIGHTS IN SRI LANKA 1st ed. at p.15] that *"An ordinary legal right appertains to private law and denotes the relationship between two private persons; a fundamental right appertains to public law and is a right which an individual possesses against the State itself"*. I should also mention that in ***Gamaethige vs. Siriwardene*** [1988 II CALR 62 at p. 73] Fernando J observed that the exercise of the Supreme Court's fundamental rights jurisdiction *"cannot be equated to the prerogative writs"*. This statement highlights the even wider gulf between the nature of a fundamental rights application and an application to a Labour Tribunal. In view of these essential differences, it cannot be said that the workman-appellant's fundamental rights

application and his application to the Labour Tribunal cover same or similar ground and have the same or similar scope.

Secondly, it appears that the Employee-Appellant's fundamental rights application and his application to the Labour Tribunal sought similar substantive reliefs.

Thirdly, the Employee-Appellant's fundamental rights application is decided by this Court by examining, *inter alia*, whether he has been subjected to unequal treatment or been denied the equal protection of the law or been made the victim of unreasonable or arbitrary or *mala fide* action on the part of the employer-respondent [which is said to be an organ or entity of the State]. The termination of the workman-appellant's services is only a part of the issue before the Supreme Court and is looked at by this Court in the context of the questions described in the preceding sentence. On the other hand, the application to the Labour Tribunal will be decided solely on the core issue of whether the termination of services was just and equitable. No doubt, Article **126 (4)** of the Constitution invests the Supreme Court with the power to grant relief which it deems just and equitable in the exercise of its fundamental rights jurisdiction. But that is only a consequential power which can be exercised, if the Supreme Courts deems fit, when granting relief. It is not the basis on which the Supreme Court will determine a fundamental rights application. Thus, it cannot be said that the core issue before the Supreme Court in the workman-appellant's fundamental rights application, was the termination of his services.

Fourthly, there is a significant disparity between the procedure followed by this Court in entertaining and determining the workman-appellant's fundamental rights application and the procedure followed by a Labour Tribunal when determining the application made to it by the Employee-Appellant. The fundamental rights application will proceed to a full hearing only if the Employee-Appellant is first able to make out a *prima facie* case that his fundamental rights have been violated by the Employer-Respondent and is granted Leave to Proceed with the fundamental rights application. The decision by this Court on whether or not to issue notice on the Employer-Respondent and whether

or not to grant Leave to Proceed, is taken based on affidavits, documents and submissions. In contrast, a Labour Tribunal is obliged to proceed to hear and determine the workman-appellant's application made to it and there is no provision for a Labour Tribunal to refuse to hear and determine that application [subject to any dismissal which may be made, after hearing both parties, on a preliminary issue of law]. Even if the Supreme Court grants Leave to Proceed and grants a full hearing of the fundamental rights application, the Court will determine the application based on affidavits, documents and submissions. In contrast, a Labour Tribunal will determine the application made to it, on the basis of the oral evidence of witnesses, including cross-examination, documents and submissions. Thus, it cannot be said that there is any similarity between the procedure which will be followed by the Supreme Court when it determines the Employee-Appellant's fundamental rights application and the procedure which will be followed by the Labour Tribunal when it proceeds to determine the Employee-Appellant's application.

It is also pertinent to note that Fundamental Rights enshrined in Chapter III of the Constitution can only be restricted by the limitations imposed by the Constitution itself and cannot be limited by any other law. Thus, provisions in the Industrial Disputes Act cannot circumscribe the scope and applicability of fundamental rights guaranteed by the Constitution. Moreover, the ability to invoke the Fundamental Rights jurisdiction of this Court is a distinct right vested in every person under Article **17** of the Constitution and such right cannot be circumscribed by a restrictive reading of the Industrial Disputes Act.

For the reasons set out above, I am of the view that a Fundamental Rights application and an application to a Labour Tribunal cannot relate to the *same* matter. Hence, I am of the opinion that a workman who has invoked the Fundamental Rights jurisdiction of this Court will not automatically be debarred from seeking relief in a Labour Tribunal by virtue of Section **31B (5)**. I hold that the Learned High Court Judge has erred in dismissing the Employee – Appellant's Labour Tribunal application on the ground that the Employee – Appellant has simultaneously resorted to invoke the Fundamental Rights Jurisdiction of this Court. In my view, the correct course of action would have been for the

Labour Tribunal to suspend its proceedings until the conclusion of proceedings in the Supreme Court under Section **31 B (3)** ***(b)*** of the Industrial Disputes Act, and, thereafter, resume hearing the application and, when making a final determination of the application, have regard to the outcome of the fundamental rights application. For the aforementioned reasons, I answer the three issues of law framed on behalf of the appellant in the affirmative and I set aside the decision of the Labour Tribunal and the judgment of the High Court dismissing the Employee - Appellant's application and direct the Labour Tribunal to rehear the application made by the Employee – Appellant.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

JAYANTHA JAYASURIYA, PC, CJ.

I agree.

CHIEF JUSTICE

MURDU N.B. FERNANDO, PC, J.

I agree.

JUDGE OF THE SUPREME COURT