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

In the matter of an appeal in terms of Section 5 of the Industrial Disputes (amendment) Act No.32 of 1990

Dissanayake Gamini Ratnasiri
Applicant

SC Appeal No.212/12
SC/SPL/LA No.161/2012
HC Colombo No.HCRA28/2011
LT ColomboNo.8/452/2010

Vs

Sri Lanka Ports Authority
Respondent

AND

Sri Lanka Ports Authority
Respondent-Petitioner

Vs

Dissanayake Gamini Ratnasiri
Applicant-Respondent

AND NOW BETWEEN

Dissanayake Gamini Ratnasiri
Applicant-Respondent-Petitioner-Appellant

Vs

Sri Lanka Ports Authority
Respondent-Petitioner-Respondent-Respondent

Before : Saleem Marsoof PC, J
Rohini Marasinghe J
Sisira J de Abrew J

Counsel : JC Boange with Shirley Gurugagodafor the Applicant-Respondent-Petitioner-Appellant
R Razik SSCfor the Respondent-Petitioner-Respondent-Respondent

Argued on : 16.7.2014
Written Submission
tendered on : By the Applicant-Appellant on 19.8.2014
By the Respondent-Respondent on 2.9.2014
Decided on : 9.12.2014

Sisira J de Abrew J.

The Applicant-Respondent-Petitioner-Appellant (hereinafter referred to as the Applicant-Appellant) who was an employee of the Sri Lanka Ports Authority, the Respondent-Petitioner- Respondent-Respondent (hereinafter referred to as the Respondent), made an application to the labour Tribunal Colombo in terms of Section 31B of the Industrial Disputes Act moving for an order on the Respondent to reinstate him with back wages. He claimed that his services were unreasonably terminated by the Respondent. The Respondent raised a preliminary objection to the effect that the Applicant-Appellant could not maintain his application in the Labour Tribunal as he had failed to give one month notice under Section 54 of the Ports Authority Act No.51 of 1979 as subsequently amended by Acts No.35 of 1984, 36 of 1990 and 2 of 1992 (the Act). The learned labour Tribunal President, by his order dated 14.12.2010, overruled the said preliminary objection.

Being aggrieved by the said order, the Respondent filed a revision application in the High Court. The learned High Court Judge, by his judgment dated 5.7.2012, set aside the order of the learned President of the Labour Tribunal, upheld the preliminary objection taken up in the Labour Tribunal and dismissed the application filed by the Applicant-Appellant filed in the Labour Tribunal.

Being aggrieved by the said order of the learned High Court Judge, the Applicant-Appellant has appealed to this court. This Court on 4.12.2012 granted leave to appeal on the question set out in paragraph 10 of the petition of appeal of the Applicant-Appellant which is reproduced below.

"Is a Labour Tribunal precluded from entertaining an application under Section 31B of the Industrial disputes Act for failure to act under Section 54 of the Sri Lanka Ports Authority Act?"

It is common ground that the Applicant-Appellant did not give notice as contemplated by Section 54(a) of the Sri Lanka Ports Authority Act. When the Respondent, in its statement of objection took up objection to the maintainability of the application on the basis of the failure to give notice in terms Section 54 of the Act, the Applicant Appellant, in his replication, stated that it was not necessary to issue such notice. Section 54 of the Sri Lanka Ports Authority Act reads as follows.

> "No action shall be instituted against the Ports Authority for anything done or purported to have been done in pursuance of this Act-
>
> (a) without giving the Authority at least one month's previous notice in writing of such intended action; or

(b) after twelve months have elapsed from the date of accrual of the cause of action."

Learned counsel appearing for the Applicant-Appellant contended that since the Applicant-Appellant filed an application in the Labour Tribunal for reinstatement and back wages it was not necessary for him to give one month notice to the Respondent. He further contended that an application filed in the Labour Tribunal did not fall within the ambit of action mention in Section 54 of the Sri Lanka Ports Authority Act. I now advert to this contention. In order to find an answer to this question it is necessary to consider the meaning of 'action'.

Black's law Dictionary 9th edition page 32, in relation to the word action, states as follows.

> "A civil or criminal judicial proceeding- Also termed action at law- An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or punishment of a public offence."

In the present case, the Applicant-Appellant prosecutes the Respondent for the enforcement or protection of his right to be in his employment. Thus, in my view, the application filed in the Labour Tribunal falls within the ambit of action.

Section 6 of the Civil Procedure Code reads as follows:

> "Every application to a court for relief or remedy obtainable through the exercise of the court's power or authority, or otherwise to invite its interference, constitutes an action."

In the present case the Applicant-Appellant whose services were terminated by the Respondent has made an application to the Labour Tribunal for relief which can be obtained through the exercise of the power of Labour Tribunal. After considering the above legal literature, I hold that the present application filed in the Labour Tribunal falls within the ambit of the term action in section 54 of the Sri Lanka Ports Authority Act. For the above reasons I reject the contention of learned counsel for the Applicant-Appellant.

The next question that must be considered is whether the Applicant-Appellant who filed the action in the labour Tribunal should give one month notice to Sri Lanka Ports Authority as the Labour Tribunal is empowered to make just and equitable orders. When I consider this question I would like to state here that there is no provision in the Industrial Disputes Act which grants Labour Tribunals immunity from acting under the Acts enacted by the Parliament. The Labour Tribunals must follow the prevailing law of the country. In this connection it is interesting to refer to a passage from the judgment of Justice Thambiah in the case of *Arnolda Vs Gopalan* 64 NLR 153 at pages 156 and 157. His Lordship referring to the powers of Labour Tribunal under the Industrial Disputes Act observed thus:

> "Its powers, as well as its jurisdiction, has to be looked for within the four corners of this statute and liability under this statute, … "

When I consider the above legal literature, it is clear that the Labour Tribunal has to comply with prevailing laws of the country although it makes just and equitable orders.

The main question that must be decided in this case is when an employee of the Sri Lanka Ports Authority files a case in the Labour Tribunal in terms of Section 31 B of the Industrial Disputes Act whether he should give one month notice to the Sri Lanka Ports Authority in terms of Section 54 of the Sri Lanka Ports Authority Act. This question arose in P Welis Vs Sri Lanka Ports Authority- case No. SC/SPL/LA 230/2009. His Lordship Marsoof PC,J (with whom Justice Sripavan and Justice Imam agreed), by judgment dated 10.3.2010, did not grant leave against judgment of the High Court Judge wherein he held that one month notice should be given to Sri Lanka Ports Authority when filing an application in the Labour Tribunal.

The same question arose in case of RP Nandasiri Vs Sri Lanka Ports Authority- No. SC/SPL/LA 92/2012. Her Ladyship Dr.Shirani Banaranayake J (with whom Ratnayake PC,J and Wanasundera PC,J agreed), by judgment dated 8.8.2012, did not grant leave.

When I consider all the above matters, I hold that when an employee of Sri Lanka Ports Authority files a case in the Labour Tribunal in terms of Section 31B of the Industrial Disputes Act, he must give one month notice to Sri Lanka Ports Authority in terms of Section 54 of the Sri Lanka Ports Authority Act and if he has failed to comply with the said requirement his application in the Labour Tribunal is bound to be dismissed. The learned High Court Judge in this case

has made an order dismissing the revision application of the Applicant-Appellant.

For the above reasons, I refuse to interfere with the judgment of the learned High Court Judge and dismiss the appeal of the Applicant-Appellant. In all the circumstances of this case I do not make an order for costs.

Appeal dismissed.

Judge of the Supreme Court.

Saleem Marsoof PC,J

I agree.

Judge of the Supreme Court.

Rohini Marasinghe J

I agree.

Judge of the Supreme Court