IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of a Special Leave to Appeal in terms of Article 154(P) read with the Constitution read with Section 31DD of the Industrial Disputes Act (as amended) and Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Jathika Sevaka Sangamaya,
No. 416, Kotte Road,
Pitakotte.

(On behalf of S.S. Samarasinghe, G.V.A.N. Senadheera, S.N. Nanayakkara, P.B.H. Denuwara and Kalyani Samarakoon)

SC Appeal No: 15/2013

CP/HCCA/KAN/61/2011

LT3/104 – 108/2005

Applicant

Vs.

Sri Lanka Hadabima Authority
No. 08, Gannoruwa Road,
Peradeniya.

Respondent

AND

Jathika Sevaka Sangamaya
No. 416, Kotte Road,
Pitakotte

(On behalf of S.S. Samarasinghe, G.V.A.N. Senadheera, S.N. Nanayakkara, P.B.H. Denuwara and Kalyani Samarakoon)

Applicant-Appellant

Vs.

Sri Lanka Hadabima Authority
No. 08, Gannoruwa Road,
Peradeniya.

Respondent-Respondent

AND NOW BETWEEN

Jathika Sevaka Sangamaya
No. 416, Kotte Road,
Pitakotte

(On behalf of S.S. Samarasinghe, G.V.A.N. Senadheera, S.N. Nanayakkara, P.B.H. Denuwara and Kalyani Samarakoon)

Applicant-Appellant-Appellant

Vs.

Sri Lanka Hadabima Authority
No. 08, Gannoruwa Road,
Peradeniya.

Respondent-Respondent-Respondent

Before : S. E. Wanasundera, PC. J.
Sisira J. de Abrew, J.
Priyantha Jayawardena, PC. J

Counsel : Uditha Igalahewa PC with Ranga Dayananda for the Applicant-Appellant-Appellant
Sobhitha Rajakaruna D.S.G. for the Respondent-Respondent - Respondent

Argued on : 26th February, 2015

Decided on : 16th December, 2015

Priyantha Jayawardena, PC. J,

This is an appeal filed by a Trade Union on behalf of some of its members to have the order of the learned High Court Judge of the High Court of the Central Province dated 8th August, 2012 and the order of the learned President of the Labour Tribunal of Kandy dated 22nd August, 2011 set aside. Further, it has prayed for the granting of the relief as prayed for in the applications made to the Labour Tribunal.

The Applicant-Appellant-Appellant (hereinafter sometimes referred to as the Appellant) made applications to the Labour Tribunal of Kandy alleging that the services of five members of Jathika Sevaka Sangamaya (hereinafter referred to as workmen) were wrongfully terminated with effect from 1st June, 2005 by the Respondent-Respondent-Respondent (hereinafter sometimes referred to as the Respondent Authority) and prayed for relief as prayed for in the said applications.

The Respondent Authority filed its answers denying the termination of services of the said workmen and further stated that the aforesaid workmen's contracts of services could not be extended as there were no provisions available for the same. Thereafter, the Appellant filed replications and stated inter-alia that the termination of services of the aforesaid workmen were not effectuated on justifiable grounds but merely effectuated with intention of politically victimizing the said workmen.

Subsequently, the Respondent Authority filed an amended answer stating that the services of the aforesaid workmen were terminated due to changes made to the regulations of the Respondent Authority in accordance with a decision of the Cabinet of Ministers dated 2nd March, 2005 and the Circular No. 27/2001. Consequently, all the appointments made with effect from 1st October, 2001 became invalid and hence such appointments were terminated with effect from 1st June, 2005 and as such it did not amount to unlawful termination.

At the inquiry before the Labour Tribunal the Appellant commenced its case as the Respondent Authority denied the termination of the services. As the subject matter in all the cases was the same all the cases were consolidated and taken up for inquiry by the Labour Tribunal.

One of the workmen namely, P.B.H. Denuwara gave evidence on his own behalf and on behalf of others and the other workmen filed affidavits on their behalf and the Appellant concluded its case marking documents A1 to A44.

Thereafter, one H.M. Wijeratne, Senior Clerk gave evidence on behalf of the Respondent Authority and the Respondent's case was closed marking documents R1 to R12. Thereafter, both parties filed written submissions.

Upon the conclusion of the inquiry the learned President of the Labour Tribunal delivered his order in favour of the Respondent on the 22nd August, 2011. The learned President raised two issues in the said order namely;

a) as to how the workmen's services were terminated, and

b) whether it is possible for the Labour Tribunal to intervene in an instance where services of the workmen were terminated by reason of a Cabinet decision.

The Appellant being aggrieved by the said order preferred an appeal to the High Court of the Central Province. However, the learned High Court Judge affirmed the said order of the Labour Tribunal and the appeal was dismissed by the Judgment dated 8th August, 2012. The learned High Court Judge stated inter-alia that the services of the workmen were terminated pursuant to a decision of the Central Government and not by the Respondent Authority and therefore, the finding of the learned President of the Labour Tribunal that he had no jurisdiction to override the authority of the Cabinet of Ministers is correct.

Being aggrieved by the aforesaid Judgment of the learned High Court Judge, the Appellant made an application seeking Special Leave from this Court and the Court granted Special Leave on the following questions of law, namely;

(a) Did the Hon. Judge of the High Court err in law by holding that the Labour Tribunal had no jurisdiction to override the authority of the Cabinet of Ministers?

(b) Did the Hon. Judge of the High Court err in law by affirming the award made by the learned President of the Labour Tribunal without properly evaluating the evidence led in the Labour Tribunal?

(e) Did the Hon. Judge of the High Court fail to consider that the Respondent was a separate and independent legal entity as distinct from a government department and thus amenable to the just and equitable jurisdiction of the Labour Tribunal?

(f) Did the Hon. Judge of the High Court fail to consider that the Respondent was legally not subject to the control of the Cabinet of Ministers?

When the appeal was taken up for hearing the learned President's Counsel for the Appellant submitted that National Agricultural Diversification and Settlement Authority (NADSA) was established by order published in Gazette under section 2 of the State Agricultural Corporations Act No. 11 of 1972 (as amended). The aforesaid NADSA was later assigned the corporate name "Haritha Danau Bim Sanwardena Madyama Adhikariya" or "Hadabima Authority" by order published in Gazette in place of "National Agricultural Diversification and Settlement Authority". In terms of section 2 of the said Act, Hadabima Authority is a body corporate having perpetual succession. According to section 8 of the said Act, general supervision, control and administration of affairs and business of the Respondent Authority is vested with the Board of Directors. In terms of section 6 of the said Act, the Minister may give general or special directions, however, after consultation with the Board of Directors. Furthermore, there is no provision in the said Act which enables the Cabinet of Ministers to give any direction to the Respondent Authority. The Board of Directors is only bound to give effect to any direction by the Minister, if, and only if, the Minister gives such direction after consultation with the Board in writing.

Appellant further submitted that very purpose of establishing a Corporation instead of a Government Department is to give a degree of independence in decision making and ease rigid control of the Government. Therefore, the Respondent Authority is not required to blindly give effect to any direction even from the Minister who is empowered to make such direction subject however, to provisions of the said Act. Therefore, the Appellant submitted that the Respondent Authority is an independent entity that is not subject to the control of the Cabinet of Ministers.

The learned Deputy Solicitor General for the Respondent Authority drew the attention of the Court to section 6 of the State Agricultural Corporation Act No. 11 of 1972.

Section 6 of the State Agricultural Corporation Act No. 11 of 1972 states as follows;

"

(1) The Minister may, after consultation with the Board of Directors, give such Board general or special directions in writing as to the exercise of the powers of the Corporation, and the Board shall give effect to such directions.

(2) The Minister may, from time to time, direct in writing the Board of Directors to furnish to him, in such form as he may require, returns, accounts and other information with respect

to the property and business of the Corporation, and such Board shall carry out every such direction.

(3) The Minister may, from time to time, order all or any of the activities of the Corporation to be investigated and reported upon by such person or persons as he may specify, and upon such order being made, the Board of Directors, any member, officer, servant or agent of the Corporation shall afford all such facilities, and furnish all such information, to such person or persons as may be necessary to carry out the order. ”

The Respondent Authority further submitted that in terms of the said section the Respondent Authority is bound to abide by the general or special directions issued by the relevant Minister who is a member of the Cabinet. The decision not to extend the services of the workmen had been taken by the Cabinet of Ministers as a policy decision of the Government.

The said decision of the Cabinet of Ministers is re-produced below;

> “ Cabinet Paper 05/0037/039/003, a Memorandum dated 22.12.2004 by the Minister of Agriculture, Livestock, Land and Irrigation on ‘Permanent Status for the Workmen of the Sri Lanka Hadabima Authority”
>
> Cabinet noted that the Cabinet Sub-Committee had considered this matter along with the Report of the Department of Management Services of the Ministry of Finance and Planning dated 14.02.2005 on “Permanent Status for the Workmen of the Sri Lanka Hadabima Authority” and approval was granted for the recommendations of the above Report ”.

The said recommendations considered by the Cabinet of Ministers contained in the Report of the Department of Management Services of the Ministry of Finance and Planning dated 14.02.2005 which was marked as “R3a” stated that creation of 70 posts and recruitment of permanent staff there for is recommended in accordance with the requirements made by the Ministry of Agriculture, Livestock, Land and Irrigation. Recruitments to respective posts on permanent basis should be made in accordance with approved schemes of recruitment. Accordingly, no further relief should be considered for those workmen who have received compensation on retrenchment.

The said decision to terminate the services of the workmen had emanated from the said decision of the Cabinet of Ministers to restructure the Respondent authority. However, neither the Labour Tribunal nor the High Court has considered the said decision of the Cabinet of Ministers. On the contrary it has been held that the Labour Tribunal has no jurisdiction to consider the same.

Thus, it is necessary to consider the legality of the order made by the Labour Tribunal which was affirmed by the High Court in deciding the question – " whether it is possible for the Labour Tribunal to intervene in an instance where the services of workmen were terminated by a Cabinet decision ". The powers of the Cabinet of Ministers, courts and labour tribunals and safeguards provided to courts and labour tribunals are enshrined in the Constitution. Hence, it is necessary to consider the relevant articles in the Constitution in order to answer the said question of law. Thus, the separation of powers enshrined in the Constitution will be considered first.

Separation of Powers

The doctrine of separation of powers is based on the concept that concentration of the powers of Government in one body will lead to erosion of political freedom and liberty and abuse of power. Therefore, powers of Government are kept separated to prevent the erosion of political freedom and liberty and abuse of power. This will lead to controlling of one another.

There are three distinct functions involved in a Government of a State, namely legislative, the executive and the judicial functions. Those three branches of Government are composed of different powers and function as three separate organs of Government. Those three organs are constitutionally of equal status and also independent from one another. One organ should not control or interfere with the powers and functions of another branch of Government and should not be in a position to dominate the others and each branch operates as a check on the others. This is accomplished through a system of "checks and balances", where each branch is given certain powers so as to check and balance the other branches.

Separation of powers enshrined in the Sri Lankan Constitution

The doctrine of separation of powers is enshrined in Article 4 read with Article 3 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the Constitution).

Article 4 of the Constitution ***inter-alia*** states;

" The Sovereignty of the People shall be exercised and enjoyed in the following manner :-

(a) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum;

(b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People;

(c) the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law. "

Article 3 of the Constitution of the Democratic Socialist Republic of Sri Lanka states as follows;

> " In the Republic of Sri Lanka sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise. "

Like in most of the Constitutions in the world, the concept separation of powers has been enshrined in the Sri Lankan Constitution too. Thus, the aforementioned three organs of the State act independently from one another. This aspect was considered by the courts and affirmed the said position.

In re the nineteenth amendment to the Constitution (2002) 3 SLR 85, Article 3 and 4 of our Constitution were considered by a bench of seven judges in the Supreme Court and then Chief Justice Sarath N. Silva, P.C. unanimously held that Article 4 is linked to Article 3 of the Constitution.

Further, it was held " the powers of government are separated as in most Constitutions, but unique to our Constitution is the elaboration in Articles 4 (a), (b) and (c) which specifies that each organ of government shall exercise the power of the People attributed to that organ. To make this point clearer, it should be noted that subparagraphs (a), (b) and (c) not only state that the legislative power is exercised by Parliament; executive power is exercised by the President and judicial power by Parliament through Courts, but also specifically state in each subparagraph that the legislative power "of the People" shall be exercised by Parliament; the executive power "of the people" shall be exercised by the President and the judicial power "of the People" shall be exercised by Parliament through the Courts. This specific reference to the power of the People in each subparagraph which relates to the three organs of government demonstrates that the power remains and continues to be reposed in the People who are sovereign, and its exercise by the particular organ of government being its custodian for the time being, is for the People. "

Moreover, clarifying our constitutional provisions, it was held (at page 98) " this balance of power between the three organs of government, as in the case of other Constitutions based on a separation of power is sustained by certain checks whereby power is attributed to one organ of

government in relation to another. " [The bill was presented to Parliament on the 19th September 2002 and the decision of the Supreme Court was conveyed to Parliament on the 22nd of October, 2002. However, the Bill was not proceeded with.]

Justice Saleem Marsoof, P.C. analyzing our Constitution in the case of *Attorney-General v. Dr. Upathissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamige Shirani Anshumala Bandaranayake* (S.C. Minutes dated 21st February, 2014) held " The power of removal of the Commissioner General of Elections consists of a mechanism in which Members of Parliament, the Speaker, the Election Commission constituted under Chapter XIVA of the Constitution and Parliament itself, play important roles, just as much as the procedure for the removal of a Judge of the Supreme Court including the Chief Justice or a Judge of the Court of Appeal envisages initiation by specified number of Members of Parliament, with the Speaker of the House and the Parliament itself and the President of Sri Lanka discharging important functions. None of these powers are vested exclusively in one single organ of government, and one or more organs of government are required to act in concurrence, providing a system of checks and balances as envisaged by Charles Montesquieu and William Blackstone, who gave the doctrine of Separation of Powers its initial momentum. "

However, a careful consideration of the Sri Lankan Constitution shows that some members of the legislature are performing executive functions and thus, in respect of certain areas there is no strict demarcation of separation of powers between the executive and the legislature – for instance the members of Parliament are appointed as ministers who perform executive functions. The said position is reflected in Article 42 (1) and (2) of the Constitution.

Labour Tribunal Presidents are Judicial Officers.

The effect of a decision of the Cabinet of Ministers on the jurisdiction of the Labour Tribunal

Labour Tribunal Presidents have been included in the interpretation of Judicial Officer in Article 170 of the Constitution.

Articles 170 of the Constitution states inter-alia ;

" Judicial officer " other than in Article 114, means any person who holds office as –

(a) a Judge of the Supreme Court or a Judge of the Court of Appeal;

(b) any Judge of the High Court or any Judge, presiding officer or member of any other Court of First Instance, tribunal or institution created and established for the administration of justice or for the adjudication of any labour or other dispute but does not include a person who performs arbitral functions or a public officer whose principal duty or duties is or are not the performance of functions of a judicial nature.

(c) ……. "

Further, according to the powers given to the Labour Tribunals by the Industrial Disputes Act as amended, such Tribunals are exercising judicial power in deciding matters before them. The aforementioned positions were considered in the cases of *Upali Newspapers Ltd. v. Eksath Kamkaru Samithiya and others* (1999) 3 SLR 205 and *Walker Sons & Co. Ltd. v. F.C.W. Fry* (1966) 68 NLR 73.

In *Upali Newspapers Ltd. v. Eksath Kamkaru Samithiya and others* (1999) 3 SLR 205 Kulatilake J. held that in terms of Article 170 of the Constitution the term 'judicial officer' is interpreted so as to include the President of a Labour Tribunal as well. In terms of Article 114 of the Constitution the President of a Labour Tribunal is appointed by the Judicial Service Commission. It is enshrined in Article 116 of the Constitution which recognizes the independence of the judiciary, certain safeguards, which enable judicial officers to perform their powers and functions without any interference.

In *Walker Sons & Co. Ltd. v. F.C.W. Fry* (1966) 68 NLR 73 it was held by Sansoni C.J, H.N.G. Fernando S.P.J., and T.S. Fernando J. (Tambiah J. and Sri Skanda Rajah J. dissenting), that " a Labour Tribunal exercises judicial power when it acts under Part IV A, particularly section 31B, of the Industrial Disputes Act (as amended by Act No. 62 of 1957). "

Independence of the Judiciary

Article 111C (1) of the Constitution (Article 116 of the Constitution was renumbered as Article 111C by the Seventeenth (17^{th}) Amendment to the Constitution) provides ***inter-alia*** as follows;

> " Every judge, presiding officer, public officer or other person entrusted by law with judicial powers or functions or with functions under this Chapter or with similar functions under any law enacted by Parliament shall exercise and perform such powers and functions without being subject to any direction or other interference proceeding from any other person except a superior court, tribunal or institution or other person entitled under law to direct or supervise such judge, presiding officer, public officer or such other person in the exercise or performance of such powers or functions. "

Article 111C of the Constitution is a manifest intention to ensure the judiciary is free from interferences whatsoever. Thus, there is a clear demarcation of powers between the judiciary and the other two organs of the government, namely, the executive and the legislature. However, the jurisdiction of courts can be validly ousted by enacting legislation to oust jurisdiction under the Sri Lankan Constitution.

As stated above the Labour Tribunals too exercise the judicial power of the State within the meaning of Article 4 of the Constitution when it exercises its powers under the Industrial Disputes Act No. 43 of 1950 as amended. Any act or decision to interfere with judicial power is outside the competence of the legislature and the executive and are inconsistent with the separation of power between executive, legislator and judiciary enshrined in the Constitution and thus, such acts or decisions are ultra vires and has no force or power in law. Further, such acts or decisions would necessarily infringe and violate the principle of independence of the judiciary enshrined in Article 111C of the Constitution which is the paramount law.

Hence, it is not possible to oust the jurisdiction of the Labour Tribunals or courts by a decision of the Cabinet of Ministers. Though, the Labour Tribunals have no judicial power to review a decision of the Cabinet of Ministers, they have the power to consider the legality and the applicability of such decisions other than the policy of the government contained in such a decision, in an inquiry under the Industrial Disputes Act as amended.

Thus, I hold that both the learned President of the Labour Tribunal and the learned High Court Judge erred in law by not considering the decision of the Cabinet of Ministers as the said decision of the Cabinet of Ministers dated 2nd March, 2005 does not oust the jurisdiction of the Labour Tribunal.

The effect of a cabinet decision on Courts and Tribunals

Now I will consider the effect of the said decision of the Cabinet of Ministers with regard to the inquiry before the Labour Tribunal. As pointed out earlier under Article 42 and 55 of the Constitution, the Cabinet of Ministers are performing executive functions under the Constitution and their decisions can be either policy decisions or administrative decisions or both. Accordingly, the decisions of the Cabinet of Ministers other than the policy decisions are amenable to judicial review. Thus, I am of the opinion that the Labour Tribunal is entitled in law to consider the said decision of the Cabinet of Ministers dated 2nd March, 2005 at the inquiry before it in order to ascertain the applicability of the said decision to the applications filed by the workmen.

I am also of the view that Labour Tribunals are required to give effect to the Government policy contained in a decision of a Cabinet of Ministers, to the extent such policies are applicable to public corporations and statutory bodies subject to applicable Constitutional provisions, laws and rules and regulations in deciding the matters before them.

This view was expressed in the case of *Insurance Corporation of Sri Lanka v. Ceylon Mercantile Union* III Srisk LR 13. It was held that the decisions in the case to terminate the services of the applicants after they reach the age of 55 years upon consideration of their applications for extensions have been lawfully taken in terms of the Public Administration Circular No. 95 of 04.04.75 which is an expression of Government policy and which was applicable to these Corporation workmen. The Policy of the Government to designate the Minister in charge to decide upon such applications for extensions of service cannot be questioned and no further justification of his decision is necessary.

In *Karunaratne v. Uva Regional Transport Board* (1986) 3 CALR 93 Wijetunge J. held "where the State, as a matter of policy lays down a code of conduct for workmen in the Public and Corporation sectors and specifies the penalties for violation of such provisions, it is obligatory in my view for a Court or Tribunal to give effect to such rules and deal with infringements in the manner provided therein."

The questions of law on which special leave was granted are answered as follows:-

(a) Did the Hon. Judge of the High Court err in law by holding that the Labour Tribunal had no jurisdiction to override the authority of the Cabinet of Ministers?

The learned High Court Judge has held that the Labour Tribunal had no jurisdiction to override the authority of the Cabinet of Ministers. Though the said finding is correct, as stated in the Order of the learned President of the Labour Tribunal dated 22nd August, 2011 the proper question of law that needs to be determined in this appeal is whether it is possible for the Labour Tribunal to intervene in an instance where services of the workmen were terminated by reason of a decision of a Cabinet of Ministers. However, the learned High Court Judge has not considered the said proper question of law. Hence, I hold that the learned High Court Judge erred in law by not considering the proper question of law which is involved in this appeal.

(b) Did the Hon. Judge of the High Court err in law by affirming the award made by the learned President of the Labour Tribunal without properly evaluating the evidence led in the Labour Tribunal?

As stated above the learned High Court Judge has failed to consider the proper question of law involved in this appeal and thereby erred in law by affirming the Order of the Labour Tribunal. Further, as the Labour Tribunal did not hold an inquiry in terms of section 31 C of the Industrial Disputes Act as amended, in respect of the preliminary objection with regard to the maintainability of the applications filed on behalf of the workmen. Hence, there was no evidence before the High Court to decide on the said preliminary objection.
In view of the foregoing answers to the aforementioned questions of law, the other two questions of law on which the leave was granted need not be answered.

Hence, for the foregoing reasons, I set aside the decisions of the learned High Court Judge dated 8th August, 2012 and the learned President of the Labour Tribunal dated 22nd August, 2011 and direct the learned President of the Labour Tribunal to proceed with the inquiry under section 31 C of the Industrial Disputes Act as amended and dispose the matter at its earliest taking into consideration of the long delay that has taken place in this appeal.

As stated above "Haritha Danau Bim Sanwardena Madyama Adhikariya" or "Hadabima Authority" which is a body corporate has been established under section 2 of the State Agricultural Corporations Act No. 11 of 1972 (as amended). Therefore, though it is an organ of the State, it is distinct from a government department.

Thus, if the learned President holds that the said decision of the Cabinet of Ministers is applicable to the inquiry before the Labour Tribunal, the learned President of the Labour Tribunal is further directed to consider whether applicable procedure set out in the said Act as amended has been followed by the Respondent Authority in order to give effect to the said decision in making a just and equitable order.

Accordingly, the appeal is allowed without costs.

Judge of the Supreme Court

S.E. Wanasundera, PC, J

I agree

Judge of the Supreme Court

Sisira de Abrew, J

I agree

Judge of the Supreme Court