

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

Sunil Sirimanne,  
Koratuhena Road,  
Badugama, Matugama.  
Applicant

**SC APPEAL NO: SC/APPEAL/131/2019**

**SC LA NO: SC/SPL/LA/341/2018**

**HCA NO: HC/Rev/18/2016**

**LT NO: LT/18/KT/509/16**

Vs.

1. Manager,  
Brave Guard Security and  
Investigations Services,  
No. 194, Sri Jayawardenapura  
Mawatha, Welikada, Rajagiriya.
2. Deputy Chief Security Officer,  
Bank of Ceylon, Kalutara Branch,  
Kalutara.

Respondents

AND

Deputy Chief Security Officer,  
Bank of Ceylon, Kalutara Branch,  
Kalutara.

2<sup>nd</sup> Respondent-Petitioner

Vs.

Sunil Sirimanne,  
Koratuhen Road,  
Badugama,  
Matugama.

Applicant-Respondent

Manager,  
Brave Guard Security and  
Investigations Services,  
No. 194, Sri Jayawardenapura  
Mawatha, Welikada,  
Rajagiriya.

1<sup>st</sup> Respondent-Respondent

AND NOW BETWEEN

Deputy Chief Security Officer,  
Bank of Ceylon, Kalutara Branch,  
Kalutara.

2<sup>nd</sup> Respondent-Petitioner-  
Appellant

Vs.

Sunil Sirimanne,  
Koratuhen Road,  
Badugama, Matugama.

Applicant-Respondent-Respondent

Manager,  
Brave Guard Security and  
Investigations Services,  
No. 194,  
Sri Jayawardenapura Mawatha,  
Welikada,  
Rajagiriya.  
1<sup>st</sup> Respondent-Respondent-  
Respondent

Before: Hon. Justice Murdu N.B. Fernando, P.C.  
Hon. Justice E.A.G.R. Amarasekara  
Hon. Justice Mahinda Samayawardhena

Counsel: D.W. Johnthasan with Malani Gallage for the 2<sup>nd</sup>  
Respondent-Petitioner-Appellant.  
Kushan Illangatilleke for the Applicant-Respondent-  
Respondent.  
Hafeel Farisz for the 1<sup>st</sup> Respondent-Respondent-  
Respondent.

Written Submissions:

By the 2<sup>nd</sup> Respondent-Petitioner-Appellant on 02.09.2020  
By the Applicant-Respondent-Respondent on 11.06.2020  
and 04.01.2021  
By the 1<sup>st</sup> Respondent-Respondent-Respondent on  
06.01.2021

Argued on: 20.01.2023

Decided on: 07.03.2024

**Samayawardhena, J.**

The applicant-employee filed an application dated 08.01.2016 in the Labour Tribunal of Kalutara under section 31B of the Industrial Disputes Act, No. 43 of 1950, as amended, naming two employers as respondents, alleging unlawful termination of his services from 20.02.2015. At the material time, he was attached to the Matugama branch of the Bank of Ceylon as a junior security officer of Brave Guard Security & Investigation Services (Private) Limited. The 1<sup>st</sup> respondent is the Manager of Brave Guard Security & Investigation Services (Private) Limited, while the 2<sup>nd</sup> respondent is the Deputy Chief Security Officer at the Bank of Ceylon, Kalutara branch.

The applicant stated in his application that following a minor altercation between him and two Bank officers of the Matugama branch, the management of the Bank informed him not to report for duty until he was transferred to another place. Subsequently, the applicant informed the 1<sup>st</sup> respondent of this situation. The 1<sup>st</sup> respondent then informed the applicant that his services had been terminated, effective from 31.03.2015.

The applicant in his application to the Labour Tribunal sought reinstatement. In the alternative, he sought reasonable compensation in lieu of reinstatement.

The 1<sup>st</sup> respondent in his answer took up the position that the Brave Guard Security & Investigation Services (Private) Limited did not terminate the services of the applicant but the applicant vacated the post on his own. He has further stated that, in any event, the 1<sup>st</sup> respondent is willing to employ the applicant in any Bank or any other institution at any moment.

The 2<sup>nd</sup> respondent in his answer took up the position that he was not the employer of the applicant. On that basis, he moved that he be discharged from the proceedings before fixing the main matter for the inquiry.

In the replication filed in response to the answer of the 1<sup>st</sup> respondent, the applicant stated that he applied for leave from 16.02.2015-20.02.2015 upon the request of the 2<sup>nd</sup> respondent, and thereafter he was asked not to report for duty by the 2<sup>nd</sup> respondent until the complaint received from the Matugama branch was inquired into. He further stated that when he inquired this from the 1<sup>st</sup> respondent, the 1<sup>st</sup> respondent informed him that he should sort out the question of re-employment with the 2<sup>nd</sup> respondent, and there was nothing the 1<sup>st</sup> respondent could do about it. This implies that the applicant did not consider the offer of re-employment by the 1<sup>st</sup> respondent as genuine. It is not clear why the Labour Tribunal did not try to settle the matter at that point.

In the replication filed in response to the answer of the 2<sup>nd</sup> respondent, the applicant stated that the approval of leave, transfers, termination of services etc. were carried out with the knowledge and under the control of the 2<sup>nd</sup> respondent.

It is against this backdrop, the 2<sup>nd</sup> respondent had moved that he be discharged from the proceedings forthwith as he was not the employer of the applicant.

The Labour Tribunal in its order dated 29.06.2016 refused to discharge the 2<sup>nd</sup> respondent from proceedings at that stage stating that it can be decided at the end of the main inquiry.

The revision application filed against this order was dismissed by the High Court by order dated 04.09.2018.

Hence this appeal by the 2<sup>nd</sup> respondent.

Section 31B(1)(a) of the Industrial Disputes Act enacts that a workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to the Labour Tribunal for relief or redress in respect of the termination of his services by his employer.

Section 48 of the Industrial Disputes Act provides broad definitions for the terms “employer” and “workman”.

*“employer” means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union) and any person who on behalf of any other person employs any workman;*

*“workman” means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and includes any person whose services have been terminated.*

In addition, the objective of adding a party to a legal proceeding is not necessarily to seek relief. If a person whose presence is necessary to effectively and completely adjudicate upon the matter before the court, he can be made a party (*Susil Perera v. Kelly* [2002] 3 Sri LR 163).

On the facts and circumstances of this case, the 2<sup>nd</sup> respondent is a necessary party. The 1<sup>st</sup> respondent does not consent to release the 2<sup>nd</sup> respondent accepting that the 1<sup>st</sup> respondent was the employer of the

applicant at the material time. Nor does the 1<sup>st</sup> respondent accept that he terminated the services of the applicant.

The 2<sup>nd</sup> respondent refers to the control test as a method of resolving this issue. Such matters cannot be addressed at this stage of the case. If necessary, those matters should be raised during the main inquiry, which is yet to commence.

The control test, integration test, economic reality test, mutuality of obligation test, dominant impression test etc., have been formulated mainly to decide whether a person is an employee or an independent contractor. The matter in issue in this case is somewhat different. In any event, such tests have no conclusive effect. The determination of the employer and employee depends on the unique facts and circumstances of each individual case. In this process, labels, designations, particular terms used by parties in their correspondence, the admissions made by parties therein etc. are, more often than not, misleading and not binding.

Who is the employer of the applicant is a question of fact. When the applicant cites two employers, and the Industrial Disputes Act gives broader definitions to the terms “employer” and “workman”, the Labour Tribunal could not have decided on the purported preliminary question before the commencement of the inquiry. That can only be done after the inquiry.

The two questions upon which leave has been granted are as follows:

- (1) Did the High Court and the Labour Tribunal err in failing to consider that the employment of the applicant by the 1<sup>st</sup> respondent has been admitted both by the applicant and the 1<sup>st</sup> respondent?

(2) Did the High Court err in failing to consider that the Labour Tribunal order was made without considering the control test applicable to employees?

I answer both questions in the negative.

I affirm the orders of the Labour Tribunal and the High Court and dismiss the appeal. Due to the unwarranted application made by the 2<sup>nd</sup> respondent on 16.03.2016, which was pursued all the way up to the Supreme Court, the applicant faced an almost 8-year delay in progressing with his case before the Labour Tribunal. The 2<sup>nd</sup> respondent shall pay Rs. 100,000 to the applicant as costs of this appeal.

Judge of the Supreme Court

Murdu N.B. Fernando, P.C., J.

I agree.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.

I agree.

Judge of the Supreme Court