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

In the matter of an Application for Special Leave to Appeal in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka, read with section 9(A) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and section 31DD (i) of the Industrial Disputes Act from a Judgement of the Provincial High Court of the Western Province (Holder in Colombo).

SC/Appeal/ 182/2019
SC (HC) LA/19/2016
Provincial High Court Revision
No. HCRA 175/2014
LT Case No.13/245/2011

B. K. M. Mahinda
No. 106/D, Meegaha Uyana,
Mabima, Heyyanthuduwa.

APPLICANT

Vs.

Sri Lanka Ports Authority
No. 19, Church Road, Colombo 1

RESPONDENT

AND THEN BETWEEN

Sri Lanka Ports Authority
No. 19, Church Road, Colombo 1

RESPONDENT-PETITIONER

Vs.

B. K. M. Mahinda
No. 106/D, Meegaha Uyana,
Mabima, Heyyanthuduwa

. **APPLICANT-RESPONDENT**

AND NOW BETWEEN

B. K. M. Mahinda

No. 106/D, Meegaha Uyana,

Mabima,

Heyyanthuduwa

APPLICANT-RESPONDENT-APPELLANT

Vs.

Sri Lanka Ports Authority

No. 19, Church Road,

Colombo 01.

RESPONDENT-PETITIONER-RESPONDENT

Before: Jayantha Jayasuriya PC CJ

Buwaneka Aluwihare PC J

Priyantha Jayawardena PC J

E.A.G.R. Amarasekara J

A.H.M.D. Nawaz J

Counsel: Uditha Egalahewa PC with N. K. Ashokbharan for the Applicant-Respondent- Appellant instructed by R. Pigera.

Viveka Siriwardena ASG with Nirmalan Wigneswaran DSG and Sureka Ahmed SC for the Respondent-Petitioner-Respondent.

Written Submissions: Written submissions of the Applicant-Appellant 29.11.2021

Written submissions of the Respondent 15.12.2021

Argued on: 09.11.2021

Decided on: 26.07.2023

JUDGEMENT

Aluwihare PC. J,

(1) The Applicant-Respondent-Appellant (hereinafter sometimes referred to as the "Applicant-Appellant") who was employed by the Sri Lanka Ports Authority, the Respondent-Petitioner-Respondent (hereinafter sometimes referred to as the "Respondent"), filed an application (P1') in terms of Section 31B of the Industrial Disputes Act No. 43 of 1950 (as amended), in the Labour Tribunal of Colombo stating *inter alia* that his services were terminated unlawfully and unjustifiably by the Respondent.

(2) The Respondent raised a preliminary objection that the said application cannot be maintained against it as the Applicant-Appellant had failed to give one-month notice to the Respondent, which the Respondent asserted was required in terms of Section 54 of the Sri Lanka Ports Authority Act No. 51 of 1979 (as amended) (hereinafter sometimes referred to as "the SLPA Act"), and moved the Labour Tribunal to dismiss the application.

(3) By order dated 30th June 2014, the learned President of the Labour Tribunal overruled the said preliminary objection and held that Section 54 of the SLPA Act has no application regarding the 'Applications' made to the Labour Tribunal, in terms of Section 31B of the Industrial Disputes Act (P10).

(4) Aggrieved by the said order, the Respondent moved by way of revision to the High Court, seeking to have the order of the Labour Tribunal set aside. By order dated 24th February 2016 (P17), the learned High Court Judge set aside the order of the learned President of the Labour Tribunal, upholding the preliminary objection of the Respondent, and dismissed the application filed by the Applicant-Appellant in the Labour Tribunal.

(5) Aggrieved by the said order of the learned High Court Judge, the Applicant-Appellant moved this Court by way of an application for special leave to appeal and special leave was granted on a solitary question of law;

Did the Learned High Court Judge err in law, in coming to the conclusion that Section 54 of the Sri Lanka Ports Authority Act No. 51 of 1979 is a mandatory provision and should be adhered to, even in the filing of an

application in the Labour Tribunal in accordance with the Industrial Disputes Act?

The Issue

(6) The fundamental issue to be determined in this appeal is whether an applicant who wishes to invoke the jurisdiction of the Labour Tribunal, is bound by the notice requirement stipulated in section 54 of the Sri Lanka Ports Authority Act.

(7) Section 54 of the Sri Lanka Ports Authority Act stipulates that;

"***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 lapsed from the date of accrual of the cause of action." [Emphasis added]

The Placement of Section 54 in the SLPA Act

(8) The Applicant-Appellant claimed that the purpose and scope of s. 54 of the SLPA Act, as evidenced by its heading and placement is limited to tortious and related damages claims against the SLPA, and has no relevance or application to employment matters and in particular, applications to Labour Tribunals in terms of Section 31B of the Industrial Disputes Act.

(9) The meaning of the words used in any part of a statute must necessarily depend on the context in which they are placed, whilst being mindful of the fact that all parts of an enactment must be construed together as forming one whole.

(10) In deciding the issue at hand, it would be pertinent to consider the well accepted canons of interpretations of statutes as well as the decisions handed down by Appellate courts regarding interpretation of provisions of statutes. As Maxwell points out, "Granted that a document which is presented to it [parliament] as a statute is an authentic expression of the

legislative will, the function of a court is to interpret that document 'according to the intent of them that made it" [Maxwell on Interpretation of Statutes 12th Edition pg1]

(11) Bindra states that,

"*…so far as possible, that 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. The words may be given a wider or* ***more restricted meaning than they ordinarily bear,*** *if the context requires it. In construing a particular section of an Act, one must look at the whole Act, and it is necessary to consider the context in which the section occurs.*" [Interpretation of Statutes, 12th Edition (2017) at page 355] (the emphasis is mine)

(12) In **Ram Narain vs. State of Uttar Pradesh**, AIR 1957 SC 13, the Supreme Court of India observed that "*the meaning of words and expressions used in an Act must take their colour from the context in which they appear*" and in the case of **Sheikh Gulfan vs. Sanat Kumar Ganguli**, AIR 1965 SC 1839, it was said that; "*Normally, the words used in a statute have to be construed in their ordinary meaning; but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material…*"

In **Union of India vs. Elphinstone Spg & Wvg Co Ltd** (2001) 4 SCC 139, the Indian Supreme Court expressed the view that,

"*General words of a particular provision of a statute may be given a restrictive meaning if the context requires it. By 'context' is meant not only the textual context arising out of the other provisions of the statute, but also factual context including the mischief to be remedied, and the circumstances under which the statute was passed. 'Context' refers to the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy.*"

(13) What could be gleaned from the decisions referred to above is that a provision should not be construed as if it stood in isolation from the rest of the statute. When a court is called upon to interpret a term of any provision of a statute, it should not confine its attention to that particular provision. The court should also consider the other parts of the statute which shed light on the intention of the Legislature.

(14) Considering this well-settled principle, Section 54 of the SLPA Act should not, in my view, be interpreted in isolation, but must be looked at in light of its placement in the Act.

Section 54 is found in PART VI of the SLPA Act under the heading "*Liability of the Ports Authority*".

The first section under this Part, namely Section 45 reads as follows;

"*The Ports Authority shall not be liable for any loss, damage or injury caused to any property or person within the limits of any specified port unless such loss, damage or injury is caused by the negligence or wrongful or unlawful act of that Authority or any of its employees or agents acting within the scope of his employment.*"

(15) The subsequent sections in this Part set out provisions pertaining to the limitation of the liability of the Respondent Authority in relation to any loss, damage or injury caused to any person or property within the limits of any specified port. It is in this context that Section 54 is placed in the Act.

(16) Additionally, Section 52 of the Act states as follows;

"***This Part shall not affect*** *any liability that may be imposed on the Ports Authority by any written law* ***relating to compensation to workmen.***" [Emphasis mine]

(17) It is also pertinent to note that the 'Part' or in other words the 'Chapter' in which Section 54 is placed is titled; "*Liability of the Ports Authority*". According to Bindra; [supra]

"*The title of a chapter in a statute is not a determining factor regarding the interpretation of the provisions of a section in the chapter, but the title certainly throws considerable light upon the meaning of the section, and where it is not inconsistent with the section, one should presume that the title correctly described the object of the provisions of the chapter.*"

(18) Having taken into account the provisions contained in Part VI of the Act, this chapter, can be said to be dealing with 'the limitation of the liability of the Respondent Authority' in relation to civil claims for damages for any loss, injury or damage caused to persons or property. If the intention of the Legislature was for the notice requirement to encompass and apply to all forms of litigation [against SLPA] including applications to Labour Tribunals filed under Section 31B of the Industrial Disputes Act, then this procedural pre-requisite ought to have been placed in the 'General' chapter of the Act instead of Chapter on 'Liability of the Ports Authority'. Part VIII of the Act begins with the Chapter titled 'General'. This Chapter delineates *inter alia* rules and regulations which may be made by the SLPA, and includes a provision declaring that suit/action does not lie against the SLPA or any of its members for any bona fide act taken under the Act (S.69), and a provision that writs cannot be issued against any member of the SLPA in any action brought against the SLPA (S. 70).

(19) On examination of the provisions of Part VI, as referred to earlier, it is evident that the applicability of section 54 is confined to actions in relation to civil claims for damages for any loss, injury or damage caused to persons or property made against the Sri Lanka Ports Authority. Section 52 in particular highlights that Part VI of the Act was not intended to affect **claims**

made by workmen against the Sri Lanka Ports Authority. Accordingly, in my view, Section 54 of the SLPA Act must be given a restrictive meaning so as to not affect an application made by a workman to a Labour Tribunal.

Whether the termination of employment is an act done in the pursuance of the SLPA Act

(20) Counsel on behalf of the Applicant-Appellant further submitted that section 54 of the SLPA Act is limited in scope to acts done or intended to be done in pursuance of the Act which does not include the termination of services of workmen.

(21) In order to substantiate this contention, the Court's attention was directed towards its interpretation of section 307 (1) of the Municipal Councils Ordinance No. 29 of 1947 (as amended) which stipulates a similar notice requirement. It was submitted that the provisions contained in section 54 of SLPA Act and section 307 (1) of the Municipal Councils Ordinance are similar and work towards the same objective and therefore must be interpreted in a similar manner, considering the principle of *pari materia*.

Section 307 (1) of the Municipal Councils Ordinance states as follows;

"*No action shall be instituted against any Municipal Council, or the Mayor or any Councillor or any officer of the Council or any person acting under the direction of the Council or Mayor for anything done or intended to be done under the provisions of this Ordinance or by any by-law, regulation or rule made thereunder*…" (emphasis added).

(22) Several judgments pertaining to the interpretation of Section 307 (1) of this Ordinance have been cited in order to substantiate the abovementioned contention.

In the case of **Liyanage vs. Municipal Council Galle** (1994) 3 SLR 216 this Court held that,

"*Section 307(1) requires notice of action in respect of "anything done or intended to be done under the provisions of [the] Ordinance". Clearly, it is*

not in respect of every act or omission that notice is required, for if that was the legislative intention section 307(1) could have simply provided that "no action shall be instituted against any Municipal Council [etc.]… until the expiration of one month….

It has been held in Perera vs. Municipal Council, Kandy, that the corresponding section of the old Ordinance- "…applies to causes of action accruing from 'something done or intended to be done under the provisions of the Ordinance.' The entering into forcible possession of another's land cannot be done or intended to be done with any propriety under the Ordinance; at least I hope so."

This was followed in Ferdinandus vs. Municipal Council, Colombo- the plaintiff (ratepayer) sent a blank cheque to the Municipal Council, with instructions to fill it for the amount due as rates; the Council inserted an amount which also included warrant costs. This was held not to be an act done or purported to be done in pursuance of the provisions of the Ordinance, but only under the authority of the ratepayer;

"if the act does not fall within the express ambit of the section….it can neither be regarded as having been performed under the provisions of the Ordinance nor as an act intended to be performed under any such provision."

(23) In **Weerasooriya Arachchi vs. Special Commissioner, Galle Municipality** (1967) 69 NLR 437, this Court held that,

"*Section 307 (2) of the Municipal Councils Ordinance is not applicable to a case where the cause of action arose from an act which was done under section 16 of the Electricity Act and which a Municipal Council has no power to perform under any of the provision of the Municipal Councils Ordinance.*"

(24) The interpretation of Section 307 (1) of the Municipal Councils Ordinance is that a notice is required only with respect to actions taken under that particular Act and not any other Act. The judgements also recognize that

even those actions are subject to exceptions i.e., not all actions under that Act are subject to the notice requirement (eg; *mala fide* actions). In light of the narrow interpretation accorded to the notice requirement provision in the Municipal Councils Ordinance, it was argued by the learned President's Counsel that a similar interpretation must be rendered to section 54 of the SLPA Act too.

(25) In order to substantiate this contention, the learned President's Counsel for the Applicant-Appellant submitted that the application of section 54 is restricted to "anything done or purported to have been done in pursuance of this Act." (Emphasis added), and that the Act does not vest the Respondent Authority with the power to terminate the services of its employees as it is in fact a term implied by the common law.

(26) It would be appropriate at this stage to briefly discuss an employer's right to terminate employment under common law.

A contract of employment can be terminated in a variety of ways, namely,

a) Termination by the employer on disciplinary grounds and constructive dismissal.

b) Termination by the employer on non-disciplinary grounds. This has assumed particular importance in view of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971.

c) Termination by operation of law, which includes termination of a contract due to such factors as frustration of contract and impossibility of performance.

d) Termination by effluxion of time, e.g., by the arrival of a mutually agreed date.

Termination by the employee, which may arise due to a variety of circumstances such as resignation, vacation or abandonment of employment or repudiation of the contract by the employee."

(The Contract of Employment, S.R. De Silva, Revised Edition-2017)

(27) The employer's right to terminate the services of an employee has been recognized as a term implied by common law (Roman Dutch Law). In "***The Contract of Employment***" by **S.R. De Silva** (2017-Revised Edition), it is stated that;

"*In the common law either party was entitled to terminate the contract of employment in accordance with its provisions without consequences.*"

In "***Egalahewa on Labour Law***" at page 13, it is stated that;

"*Implied terms may also come from common law, which is the foundation of contract of employment. Eg. the right of the employer to select the employee of his choice, to deal with misconduct, right to transfer, right to be supervised and direct the manner of performance, vacation of post, frustration, right to terminate the contract etc. subject, however to the modifications made by the statute law, if any as some of these rights are modified by statute law. The court may always imply statutory terms as are reasonably necessary to give effect to the contract even though the parties have omitted to settle any particular point, before engagement.*"

(28) In **State Distilleries Corporation vs. Rupasinghe** (1994) 2 SLR 395, it was held that;

"*Under the common law, an employer had an absolute right to terminate the contract of employment (subject only to an obligation as to notice or payment in lieu)…*"

(29) In **Vasantha Kumara vs. Skyspan Asia (Pvt.) Ltd.** (2008) 1 SLR 324, Dr. Shirani Bandaranayake, J. held that,

"*It is to be noted that although this position would have been correct under the common law, where either party was entitled to terminate the contract of employment in accordance with its provisions without any consequential effect, the introduction of Labour Laws had modified this position.*"

(30) Under common law, therefore, an employer has a right to terminate the employment of a workman. On this basis, it was argued on behalf of the

Applicant-Appellant that the termination of employment by the Sri Lanka Ports Authority is not an act done in pursuance of the SLPA Act.

(31) The Respondent, on the other hand argued that the long title of the Act and section 7(1) of the SLPA Act covers matters relating to workmen/employees as well.

The Long Title states that; "*this Act shall apply for matters in relation to the officers and servants, property, rights, obligations and liabilities of the Port (Cargo) Corporation and the Port Tally and Protective Services Corporation and the public officers of, the property held by, and the rights, obligations and liabilities of, the department of the Port Commissioner…and for connected matters*".

It was contended that the objectives of the Respondent Authority spelled out in the Long Title to the Act cannot be achieved without its workmen/employees who thus form an integral part of the Authority and are therefore covered by the Long Title.

Section 7 (1) of the SLPA Act states that the Respondent Authority has the power to;

"*(b) employ such officers and servants as may be necessary for carrying out the work of the Authority;*

"(e) to make rules in relation to the officers and servants of the Authority, including their appointment, promotion, remuneration, discipline, conduct, leave, working times, holidays and the grant of loans and advances of salary to them;

(f) to make rules and prescribe procedures in respect of the administration of the affairs of the Authority"

It was argued that under sections 7 (1) (e) and (f), the Respondent Authority has the power to make rules regarding conduct and discipline and prescribe procedures relating to the administration of affairs to achieve its objectives and thus it is only logical and pragmatic for the Respondent Authority to terminate the services of the workmen when carrying out the foregoing.

(32) The learned Additional Solicitor General also submitted that by-laws or rules of the SLPA provided for termination of its employees and therefore section 54 encompasses the act of termination of services. Counsel on behalf of the Applicant-Appellant, however, argued that this contention is baseless as section 54 only refers to "the Act" and not to any by-laws, rules or regulations.

(33) It was pointed out that this is in contrast to section 307 (1) of the Municipal Councils Ordinance which makes a notice mandatory for all actions "*instituted against any Municipal Council, or the Mayor or any Councillor or any officer of the Council or any person acting under the direction of the Council or Mayor for anything done or intended to be done under the provisions of this Ordinance or by any by-law, regulation or rule made thereunder.*" (Emphasis added)

(34) The maxim *expressio unius est exclusio alterius* enunciates the maxim of interpretation that the express/specific mention of one item in a list implies the exclusion of other items. This appears to be, in my view, an instance in which this maxim should be applied to raise the inference that the express exclusion of acts done or purported to have been done by any rule, regulation or by-law made under the SLPA Act, denotes that section 54 only applies with respect to acts done in pursuance of the **Act** itself.

(35) Despite the Respondent's argument that the SLPA Act refers to workmen and that the power to terminate the services of workmen is a necessary act performed under and by virtue of the SLPA Act, there is no specific provision contained in the Act which relates to termination of employment, apart from Section 22A, which states as follows,

> "*Where the services of any employee of the Ports Authority are to be terminated on any ground other than that of misconduct, notice of such termination shall be given by the Ports Authority to such employee at least one month before the date of such termination or one month's*

salary or wages shall be paid to him by such Authority in lieu of such notice."

(36) This section does not vest the Respondent Authority with any power to terminate the employment of workmen. It merely stipulates an obligation that the Respondent Authority has to follow whenever the services of an employee are terminated on non-disciplinary grounds.

(37) Accordingly, there is nothing in the SLPA Act itself, which authorizes the Respondent Authority to terminate the services of a workman. Accordingly, the act of termination of a workman cannot be said to be an act done "in pursuance of this Act". Therefore, the inference that can be drawn is that section 54 of the SLPA Act does not encompass applications made to Labour Tribunals by workmen on the termination of their services.

<u>The Definition of "Action"</u>

(38) It was the contention of the learned President's Counsel for the Applicant-Appellant that the notice requirement contemplated in Section 54 of the Act is only in relation to "Action" filed against the SLPA and that an Application to the Labour Tribunal is not an "Action" within the meaning contained in the Civil Procedure Code but proceedings of *sui generis* nature.

(39) It was further contended that upon scrutiny of Section 54 of the SLPA Act, it is abundantly clear, the word "Action" referred to therein is an action within the meaning of Sections 5 and 6 of the Civil Procedure Code.

(40) The Applicant-Appellant, in his replication, admitted that he did not give prior notice under section 54 of the Act, on the ground that the Labour Tribunal application filed under the Industrial Disputes Act was for relief or redress and was not an "action" instituted against the Respondent.

(41) The term "Action" has not been defined in the SLPA Act.
In ***Black's Law Dictionary***, 11th Edition, page 37, the term "action" is defined as,

"*A civil or criminal judicial proceeding- 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 the punishment of a public offense. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which if conducted to a determination, will result in a judgment or decree. The action is said to terminate at judgment.*"

Wharton's Law Lexicon (14th Ed.) states that, "*actions are divided into criminal and civil……".*

(42) Section 5 of the Civil Procedure Code (CPC) defines "Action" as "*a proceeding for the prevention of redress of a wrong"*

Section 6 of the CPC states that an action is,

"*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.*"

Learned Counsel appearing for the Applicant-Appellant contended that an application before a Labour Tribunal is a *sui generis* application, and not an "action". Therefore, Labour Tribunals are not bound by the notice requirement stipulated in section 54 of the SLPA Act which is for "actions" instituted against the Respondent Authority.

(43) It was contended that *ex facie*, the Civil Procedure Code (CPC) which defines "action" only refers to the matters filed under the CPC, and therefore the CPC has no application to applications filed in a Labour Tribunal under section 31B of the Industrial Disputes Act No. 43 of 1950 (as amended).

(44) It was also contended that Section 5 of the Civil Procedure Code which states that the words and expressions mentioned therewith "shall have the meanings hereby assigned to them, **unless there is something in the subject or context repugnant thereto**" not only limits the scope of application of the definitions contained in the CPC but also enunciates the view that no

blanket meaning can be attributed to a word and that every term must be interpreted in light of the context and/or subject.

(45) In light of Section 6 of the CPC which states that an action is an "*…. 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…….*", it was argued that applications before Labour Tribunals are not actions as Labour Tribunals are not Courts *per se*.

(46) The distinction between Tribunals and Courts is said to be further evinced by Article 105 of the Constitution which provides as follows;
"*105. (1) Subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of the People shall be-*
(a) the Supreme Court of the Republic of Sri Lanka,
(b) the Court of Appeal of the Republic of Sri Lanka,
(c) the High Court of the Republic of Sri Lanka and such other Courts of the First Instance, tribunals or such institutions as Parliament may from time to time ordain and establish.
*(2) **All courts, tribunals and institutions created and established by existing written law for the administration of justice and for the adjudication and settlement of industrial and other disputes**, other than the Supreme Court, shall be deemed to be courts, tribunals and institutions created and established by Parliament. Parliament may replace or abolish, or amend the powers, duties, jurisdiction and procedure of, such courts, tribunals and institutions.*" (Emphasis added)

(47) It was submitted that the Constitution itself distinguishes between courts, tribunals and other institutions created and established by existing written law for the administration of justice and for the adjudication and settlement of industrial and other disputes. The contention is that Labour Tribunals are not courts and therefore an application before a Labour Tribunal is not an action as per Section 6 of the CPC.

(48) Furthermore, Section 7 of the CPC states that;

"*The procedure of an action may be either regular or summary.*"

Counsel for the Applicant-Appellant argued that Section 6 read with Section 7 clearly indicate the fact that an "action" as contemplated by the CPC is restricted to "regular" and "summary" actions contained therein, and does not include or even appear to contemplate applications to Labour Tribunals whose proceedings are neither regular nor summary but are of a *sui generis* nature.

(49) Furthermore, in order to substantiate the contention that Labour Tribunals operate differently from ordinary courts of law, great emphasis was placed on the distinct nature, function and powers of the Labour Tribunal.

(50) It was submitted that Labour Tribunals are conferred with just and equitable jurisdiction and are thus empowered to grant compensation to a workman, even when his/her dismissal is lawful and just, which in turn cannot be strictly construed as the redressing of a wrong. It was also noted that Labour Tribunals are entrusted with powers to be more flexible with procedural and evidential requirements in order to achieve justice and equity which evince their *sui generis* nature. Hence, it is argued that the Respondent's contention that Labour Tribunals are courts of law in which actions are instituted cannot stand.

(51) It was further submitted that this court has upheld the flexible nature of the Labour Tribunals in **Somawathie vs. Backsons Textile Industries Ltd** (1973) 79 NLR 204 affirming the position that Labour Tribunals function differently from courts of law and are not strictly bound by procedural requirements.

In this case it was held that (pages 206-207),

"*Labour Tribunals were never intended to perform the functions of Courts of Law, and make an order whether the applicant is guilty or not of the allegations made against him by the employer. It is not a verdict that the Law requires from the President but a just and equitable order -order that is just and equitable in relation to the employer and employee and the employer-employee relationship, due consideration being given to discipline and the resources of the employer and even the interests of the*

public may have been given thought to. It is for this reason that the Labour Tribunals are not confined by the rules of evidence. They can adopt their own procedure, they can act on confession and the testimony of accomplices so that they can have a free hand to make a fair order."

(52) Furthermore, in the High Court case of **Sri Lanka Ports Authority vs. Chandrawansa** (HCRA/52/2011) it was held that, "*What the learned President of the Labour Tribunal is required to do at the end of the inquiry is to pronounce a just and equitable order. This shows that such decisions should not be untrammeled by the technicalities.*"

(53) However learned Counsel on behalf of the Respondent submitted that this Court has been consistent in holding that Labour Tribunals are bound by the notice requirement stipulated by section 54 as evidenced by the case of **Dissanayake Gamini Ratnasiri vs. Sri Lanka Ports Authority** (SC/Appeal/212/12), where it was held that "*when an employee of the Sri Lanka Ports Authority files a case in the Labour Tribunal in terms of section 31B of the Industrial Disputes Act (IDA), he must give one month notice to the 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.*"

(54) It was further submitted that this position is fortified by the refusal of this Court to grant leave on this notice requirement matter in **R.P. Nandasiri vs. Sri Lanka Ports Authority** (SC/SPL/LA/92/2012) and **P. Welis vs. Sri Lanka Ports Authority** (SC/SPL/LA/230/2009). When leave to appeal was refused in **P. Welis vs. Sri Lanka Ports Authority**, Marsoof PC J stated that *"…in view of the fact that there is some evidence that a miscarriage of justice might have occurred in this case, Learned Deputy Solicitor General is requested by Court to see whether some administrative relief can be afforded, after considering any appeal that might be made on behalf of the petitioner to the Respondent Authority with a copy to the Attorney General.*"

(55) It is argued that this indicates not only the fact that this Court upheld the mandatory nature of the notice requirement but also indicates that in the

event of non-compliance with this mandatory requirement, it is the Respondent Authority that must decide on equitable considerations.

(56) Commenting on the **Backsons Textile** case relied on by the Applicant-Appellant, it was argued that when considering the dicta quoted by the Applicant-Appellant it is evident that this Court had held that in relation to rules of evidence, the Labour Tribunals can adopt their own procedure, which is in fact fortified by Section 34(6) of the Industrial Disputes Act which provides that "*In the conduct of proceedings under this Act, any industrial court, labour tribunal, arbitrator, or authorized officer or the Commissioner shall not be bound by any of the provisions of the Evidence Ordinance.*" Therefore, it is argued that the Applicant-Appellant's stance in relation to the **Backsons Textile** case is misconceived in law.

(57) It was also contended that apart from section 34(6) of the IDA which limits the application of the Evidence Ordinance to Labour Tribunal proceedings, there is no other provision in the IDA which broadly grants Labour Tribunals immunity from Acts of Parliament. Therefore, it is argued that one month's prior written notice to the Respondent Authority as per section 54 of the SLPA Act must be complied with prior to invoking the jurisdiction of the Labour Tribunal.

(58) Despite Labour Tribunals exercising just and equitable jurisdiction, the Respondent's contention is that equity cannot override Acts of Parliament, and that when Labour Tribunals make just and equitable orders, they must do so within the four corners of the existing legal framework which includes the SLPA Act.

(59) In order to illustrate this point, the Respondent cites the following cases,
In **Hayleys v Crossette** 363 NLR 248 it was held that,
"…. *It is indeed a strange proposition to state that, when section 24 of the Industrial Disputes Act conferred jurisdiction on the Industrial Court to make such award as may appear to the Court to be just and equitable such a Tribunal can completely disregard the law of the country and act in an arbitrary manner. In my opinion, the Industrial Court should take into*

account the law of the country, and, in particular, the law governing contracts."

(60) In **Richard Peiris & Co. Ltd vs. Wijesiriwardena** 262 NLR 233 it was held that,

"*In regard to the power of the Tribunal to make such order as may appear to be just and equitable there is point in the Counsel's submission that justice and equity can themselves be measured according to the urgings of a kind heart but only within the framework of the law.*"

(61) In **Municipal Council of Colombo vs. Munasinghe** 71 NLR 223, H.N.G. Fernando CJ held that,

"*…where the Industrial Disputes Act confers on an Arbitrator the discretion to make an Award which is Just and Equitable the Legislature did not intend to confer on an Arbitrator the freedom of the wild horse……An Arbitrator holds no license from the Legislature to make any such Award as he may pleases, for nothing is Just and Equitable which is declared by whim or caprice or by the toss of a double headed coin.*"

(62) Therefore, it is the Respondent's position that the Labour Tribunal is bound by the Acts/Ordinances/ Laws and Statutes of Parliament and therefore just and equitable orders envisaged under the Industrial Disputes Act must be made within the framework of the law of the country.

(63) The Applicant-Appellant had contended that all actions under the CPC have to either be "regular" or "summary" actions as outlined in Section 7 of the CPC. However, in the case of **In re Goonesingha** 44 NLR 75 it was held that the classification of actions as regular and summary is not exhaustive. Mosley S. P. J. held that,

"*…Crown Counsel's argument was that section 6 is qualified by section 7, which provides that "the procedure of an action may be either regular or summary," and contended that the procedure upon an application for a writ of certiorari is neither regular nor summary. A somewhat similar argument had been advanced in* ***Subramaniam Chetty v. Soysa*** *(supra) in*

which the question for decision was whether proceedings to set aside a sale constituted an action. That view was rejected by Bertram C. J., who conceived, for the purposes of the case before him, the possibility of "an action within an action". That, of course is not the case here, but, at all events, Bertram C.J. does not appear to have considered that the classification of actions in section 7 as regular or summary is exhaustive."

(64) In the more recent case of **Jayawardene vs. Obeysekere and 5 Others**, J. A. N. de Silva C.J., held,

"The Civil Procedure Code itself, despite the wording in section 7 paves the way for another type of proceedings i.e. found in chapter VIII to be followed in respect of liquid claims. The procedure set out therein is distinctly different to the "regular" procedure as well as the "summary" procedure already referred to….

…….

The legislature may have in its wisdom adopted various procedures to be followed in relation to the diverse actions which it deems appropriate".

(65) Accordingly, the contention of the Applicant-Appellant that all "actions" under the CPC must follow either the "regular" or "summary" procedure as specified in Section 7 cannot be supported.

(66) The main argument raised by the Applicant-Appellant is that an application before a Labour Tribunal is not an "action" within the meaning of the CPC. In order to assess this contention, it would be useful to determine judicial pronouncements surrounding the term "action".

(67) In **M. L. Marikkar vs. Abdul Aziz** 1 NLR 196, it was held that the term "action" does not encompass insolvency proceedings. Withers, J. stated "… *Action is not an apt term to describe insolvency proceedings, the procedure in regard to which is regulated by Ordinance No. 7 of 1853.*"

(68) In **Silverline Bus Co., Ltd vs. Omnibus Co., Ltd** 58 NLR 193, the Privy Council held that an application for a writ of *certiorari* does not come within the meaning of the term "action" as defined in the CPC. Basnayake, C. J., held,

"*… A writ of certiorari is not a means of obtaining a relief or remedy through the Court's power or authority. It is purely a supervisory function of the Court, while section 6 of the Civil Procedure Code contemplates an entirely different function. In my view it would be wrong to read section 6 by itself without reference to other provisions of the Civil Procedure Code. To my mind section 6 when read with the other sections of the Civil Procedure Code leaves no room for the view that a writ of certiorari falls within the definition of action in the code…*"

(69) The cases referred to above suggest, that not all applications or proceedings before a Court of Law can be classified as "actions" as defined in the CPC. In determining whether an application or proceeding falls within the meaning of an "action" as per the CPC, it must be examined whether the Court is exercising its ordinary power or authority when dealing with such application or proceeding.

(70) The Applicant-Appellant in addition to contending that a Labour Tribunal is not a "Court", has highlighted many features of Labour Tribunals which distinguish applications before such Labour Tribunals from ordinary claims before a Court. The differences that exist between Labour Tribunals and ordinary Court of law can be seen from an examination of the history surrounding the establishment of Labour Tribunals.

(71) 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, as indicated in its long title. It has long been recognized that the object and purpose of this Act is the maintenance and promotion of industrial peace. In **Colombo Apothecaries 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*."

(72) Originally, the remedies provided to a workman under this Act were limited to, conciliation, arbitration, collective bargaining and Industrial Courts. However, these remedies had certain drawbacks. For example, arbitration greatly depended on the co-operation of the employer, when the employer failed to co-operate with the voluntary arbitration process, the only effective remedy available was compulsory arbitration at the discretion of the Minister. Thus, if the Minister did not refer the parties to compulsory arbitration the aggrieved workman would have no remedy available.

(73) Furthermore, when a dispute arose from unfair termination of employment, there was no direct remedy except under the Common Law of Sri Lanka (i.e. Roman Dutch Law) where a workman could resort to a civil action against the employer in the District Court. Since the Roman Dutch Law does not recognize specific performance of a contract of service, the aggrieved party was not entitled to reinstatement either directly by an order for reinstatement or indirectly by an injunction against the employer. Therefore, the only remedy available in a District Court was damages for wrongful termination. In **R v. National Arbitration Tribunal, ex parte Horatio Crowther & Co. Ltd** (1948) 1 KB 424, it was observed that,
"*a remedy which no court of law or equity has ever considered it had power to grant. If an employer breaks his contract of service with his employees…..the workmen's remedy is for damages only. A court of equity has never granted an injunction compelling an employer to continue a workman in his employment or to oblige a workman to work for an employer.*"

(74) In the backdrop of the aforesaid lacunae found in the Industrial Disputes Act, Labour Tribunals were introduced and established under Part IVA of the Industrial Disputes (Amendment) Act No. 62 of 1957, to which aggrieved workmen whose services had been terminated could directly apply to for relief. Unlike ordinary courts of law which would only consider whether the termination was in terms of the contract, Labour Tribunals go beyond the parameters of the contract in order to ascertain whether the termination was wrongful and is vested with the power to

award reinstatement or compensation to an employee who was unfairly dismissed even though the termination was in accordance with the contract, which is in contrast to the approach adopted in the District Courts.

(75) This is clearly evinced by the wording of Section 31B (1)(a) which states that a workman or a trade union on behalf of a workman who is a member of that union can make an application to a Labour Tribunal for relief or redress in respect of the **termination of his services by his employer**, which implies that termination in accordance with the contract of employment does not bar a workman from seeking relief or redress from a Labour Tribunal. The order of the Tribunal would be on the basis of what appears to it just and equitable.

(76) The *sui generis* nature of Labour Tribunals which distinguishes them from ordinary courts of law in which actions are instituted was highlighted in the case of **The United Workers Union vs. Devanayagam** (1967) 69 NLR 289. In this case the Privy Council held that a Labour Tribunal President did not hold judicial office when dealing with an application made to the Tribunal. It was also held that when a direct application is made to a Labour Tribunal, its powers and duties (i.e. to make a just and equitable order) do not differ from the powers and duties of an arbitrator, an Industrial Court or a Labour Tribunal on a reference by the Minister or the Commissioner of Labour. The Privy Council also specifically referred to the fact that in dealing with applications, the Labour Tribunals are not restricted by the terms of the contract of employment in granting relief or redress. Therefore, Labour Tribunals perform a different function to that of an ordinary Court of law.

(77) In consideration of the unique nature of Labour Tribunals and the rationale behind their establishment, the inference that can be drawn is that for the purpose of Section 54 of the SLPA Act, applications filed in the Labour Tribunals cannot be considered as "actions" contemplated in section 54 of that Act. Despite the Respondent's contention that the Industrial Disputes Act does not specifically exclude the application of the SLPA Act, on the

interpretation of section 54 it is clear that this procedural pre-requisite has absolutely no bearing on applications filed in Labour Tribunals.

(78) The Respondent relied heavily on the decided case of **Dissanayake Gamini Ratnasiri vs. Sri Lanka Ports Authority** (SC/Appeal/212/12) in support of their position that Labour Tribunals are bound by the notice requirement stipulated by Section 54 of the SLPA Act. In the said case it was held as follows,

"*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."

(79) On the basis of the reasons stated above, this court in **Dissanayake Gamini Ratnasiri vs. Sri Lanka Ports Authority** has come to the finding that an

application to a Labour Tribunal is an action within the meaning of Section 54 of the SLPA Act. The Applicant-Appellant in the present action has raised several novel arguments such as the placement of Section 54 within the SLPA Act, the distinction between a Court and a Tribunal, as well as the *sui generis* nature of applications before Labour Tribunals which, presumably not urged before the court and thus, not come up for consideration in the aforementioned case. Consequently, I must most respectfully state that I am unable to agree with the findings arrived at in the decision of **Dissanayake Gamini Ratnasiri vs. Sri Lanka Ports Authority**.

(80) Accordingly, I hold that an application before a Labour Tribunal is not an "action" as contemplated in section 54 of the SLPA Act.

Whether the six-month statutory time limit provided for by Section 31B(7) of the Industrial Disputes Act cannot be fettered by the SLPA Act.

(81) It is noteworthy that Section 31B (7) of the Industrial Disputes Act as amended by Act No. 21 of 2008 imposes a six-month statutory time limit from the date of termination for a workman to make an application to a Labour Tribunal. The Applicant-Appellant submits that the aforementioned six-month statutory time limit is not subject to any other law. It is also submitted that the amendment made by Act No. 21 of 2008 represents the latest intention of the legislature which is to provide an employee six months to file an application before the Labour Tribunal. Accordingly, the Applicant-Appellant's contention is that prior to the submission of such application, if one month's notice is required to be given under S. 54 of the SLPA Act, it would only leave 5 months for a workman to invoke the jurisdiction of the Labour Tribunal. The contention is that the latest intention of the legislature as enacted in 2008, is to grant a six-month limit, and therefore an unrelated provision cannot be said to override the latest intention of the legislature reflected in section 31B (7) of the IDA.

(82) In my view, this position of the Applicant-Appellant cannot be supported. It is indeed possible for two distinct statutes, to set out two different obligations in relation to the same process, without the later statute

necessarily having to supersede the earlier statute. There is nothing to suggest that the six-month statutory time period cannot be subject to any other requirements. Nothing in S. 31B(7) of the IDA or Act No. 21 of 2008 suggests that the said section should prevail over the SLPA Act. As the Respondent contends, when two distinct statutes impose different requirements or obligations, they should be read harmoniously so as to give effect to both statutes.

Bindra states that,

"When two provisions are mutually contradictory, they should be interpreted and read together so as to obviate the apparent inconsistency". [Interpretation of Statutes, 8th Edition (2017) at page 507]

Accordingly, I find the contention of the Applicant-Appellant that the six-month statutory time limit provided by Act No. 21 of 2008, being the latest intention of the legislature prevails over all other requirements, cannot be supported.

Conclusion

(83) In conclusion, this Court has arrived at the following findings. Firstly, an "action" as contemplated under section 54 of the SLPA act is an action against the SLPA in relation to civil claims for damages for any loss, injury or damage caused to persons or property and does not encompass an application made by a workman to a Labour Tribunal. Secondly, as the termination of employment of a workman is not an act done in pursuance of the SLPA Act, Section 54 does not apply to an application made by a workman before a Labour Tribunal. Thirdly, an application before a Labour Tribunal is not an "action", as contemplated under section 54 of the SLPA Act but is a proceeding of *sui generis* nature.

(84) Therefore, having analysed section 54 of the Sri Lanka Ports Authority Act, it can be held that Labour Tribunals are not bound by the notice requirement stipulated in section 54 of that Act and the question of law on which special leave was granted is answered in the affirmative.

(85) Accordingly, the impugned order of the learned High Court judge dated 24.02.2016 is hereby set aside and the application of the Appellant is

remitted to the Labour Tribunal to be dealt with expeditiously as the circumstances would permit, in accordance with the law.

Under the circumstances of this case, I do not order costs.

Appeal Allowed

JUDGE OF THE SUPREME COURT

JUSTICE JAYANTHA JAYASURIYA PC

I agree

CHIEF JUSTICE

JUSTICE PRIYANTHA JAYAWARDENA PC

I agree

JUDGE OF THE SUPREME COURT

JUSTICE E.A.G.R. AMARASEKARA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE A.H.M.D. NAWAZ

I agree

JUDGE OF THE SUPREME COURT