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

In the matter of an application for Special Leave to Appeal and in terms of Section 31D of the Industrial Dispute Act No 43 of 1950 read with the section 99 (a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990

Laththuwahandi Priyani De Silva
Vijitha,
Balapitiya.

NOW AT

No. 420/1, Lansiyawatta Road,
Pathegama,
Balapitiya.

Applicant

SC/APPEAL/183/2017
Labour Tribunal Case No. 01/AD/80/2011
H.C.A.L.T. No. 45/2014
SC (SPL) LA 211/2016

Vs.

1. W. T. Ellawala
   Chairman,
   Sinhalese Sports Club
   35, Maitland Place,
   Colombo 07.

2. A. D. H. Samaranayake,

Secretary,
Sinhalese Sports Club,
35, Maitland Place,
Colombo 07.

3. S. Gunawardena,
Treasurer,
Sinhalese Sports Club,
35, Maitland Place,
Colombo 07.

Respondents

AND NOW

1. W.T. Ellawala
Chairman,
Sinhalese Sports Club
35, Maitland Place,
Colombo 07.

2. A. D. H. Samaranayake,
Secretary,
Sinhalese Sports Club,
35, Maitland Place,
Colombo 07.

3. S. Gunawardena,
Treasurer,
Sinhalese Sports Club
35, Maitland Place,
Colombo 07.

Respondents – Appellants

Vs.

Laththuwahandi Priyani De Silva
Vijitha,
Balapitiya.

Applicant – Respondent

AND NOW BETWEEN

Laththuwahandi Priyani De Silva
Vijitha,
Balapitiya.

NOW AT

No. 420/1 Lansiyawatta Road,
Pathegama,
Balapitiya.

Applicant – Respondent –
Appellant

Vs.

4. W. T. Ellawala
   Chairman,
   Sinhalese Sports Club
   35, Maitland Place,
   Colombo 07

5. A. D. H. Samaranayake,
   Secretary,
   Sinhalåese Sports Club,

35, Maitland Place,
Colombo 07.

6. S. Gunawardena,
Treasurer,
Sinhalese Sports Club,
35, Maitland Place,
Colombo 07

Respondents – Appellants –
Respondents

Before : Priyantha Jayawardena PC, J
: Yasantha Kodagoda PC, J
: Achala Wengappuli, J

Counsel : Vasantha Gunasekara for the Applicant-Respondent-Appellant

: Shanaka Cooray with Prasan Gunathilake the Respondents-Appellants-Respondents

Argued on : 14th March, 2022.

Decided on : 29th February, 2024

Priyantha Jayawardena PC, J

Facts of the case

The applicant-respondent-appellant (hereinafter referred to as the "appellant"), an employee of the Sinhalese Sports Club, alleged the unlawful termination of her employment. The appellant further stated, *inter alia,* that she joined as a Trainee Clerk on the 12th of July, 1993, and at the time of termination of her service, she was working as a Stores Account Clerk of the canteen.

Moreover, as the employer created a difficult environment to work, she tendered her resignation by letter dated 7th of July, 2011, but later she sent another letter on the 11th of July, 2011, withdrawing her resignation. However, at the request of the employer, the appellant changed the date of the said letter as the 12th of July, 2011. The appellant further stated that her employment was terminated by the letter dated 2nd of August, 2011, and her last drawn salary was Rs. 24,290.

The respondents-appellants-respondents (hereinafter referred to as the "respondents") filed their answer and admitted the date of employment and the salary of the appellant. The respondents further stated that the appellant voluntarily resigned on the 11th of July, 2011 and thereby, she voluntary terminated her services.

Since the termination of services was denied by the respondents, the inquiry commenced with the appellant giving evidence before the Labour Tribunal. At the inquiry before the Labour Tribunal, the appellant stated that after the withdrawal of the letter of resignation, she was called for a domestic inquiry by the letter dated 18th of July, 2011. After the said domestic inquiry, by the letter dated 2nd August, 2011, resignation given by the appellant was accepted. The letter further stated that the appellant's complaint against a member of the Executive Committee of the Club was proved to be a false allegation at the inquiry.

Thereafter, she has filed an application the Labour Tribunal. After the inquiry, the learned President of the Labour Tribunal delivered his Order dated 24th of April, 2014. It was held that the appellant's resignation was not voluntary, and that acceptance of the resignation notice was necessary prior to its withdrawal to render the resignation valid. Thus, it was held that the termination of the services of the appellant by the respondent is unjust and unlawful.

Thus, the Labour Tribunal ordered the employer to pay a three months' salary for each year of service, but in calculation, the service period was taken as eight years. However, the learned President of the Labour Tribunal after noticing the error in the order, corrected it under Regulation 29 of the Industrial Disputes Act 1958 and ordered the respondent to pay a sum of Rs. 1,311,660.

The respondents being aggrieved by the aforesaid order of the Labour Tribunal, referred an appeal to the provincial High Court of the Western Province Holden in Colombo (hereinafter referred to as the "High Court"). After the hearing, the learned judge of the High Court delivered her Order on the 23rd of September, 2016, and held;

"Respondent employee has terminated her employment by voluntary resignation from the services of the Appellants' Club and that was not a termination by the employer"

Accordingly, the Order of the Labour Tribunal was set aside, and an Order was made to give Rs. 100,000 as ex-gratia payment.

Being aggrieved by the said Order of the High Court, the appellant sought Special Leave to Appeal from the Supreme Court and this court granted Leave on the following questions of law;

"(b). Did the Honourable High Court Judge err in law when she decided that Regulation 29 of the Industrial Dispute Regulations 1958 is not applicable to Labour tribunal

(c). Did the Honourable Judge of the High Court err in law when she deciding that the Appellant terminated her service by tendering voluntary resignation?

(e). Did the Honourable High Court Judge misinterpreted and misapply the established legal principles applicable for the resignation of the employment and thereby commit error of law."

In addition to the above questions of law, the court framed the following question of law;

"Whether the compensation awarded by the Labour Tribunal is excessive?"

Written Submissions on behalf of the appellant

The learned counsel for the appellant submitted that the appellant tendered her resignation due to ill treatment by the superior officers of the respondent club. It was also submitted that she handed over a letter to the Chairman/Secretary of the respondent club stating the injustice that was caused to the appellant by the General Manager. Furthermore, in the said letter, she stated that her salary increment was not granted by the General Manager despite her superior's recommendation of her work as being excellent in the evaluation of her work.

Moreover, it was submitted that by the letter dated 5th of May, 2011, the appellant and another employee of the accounts branch wrote a letter to the Chairman regarding their grievances. It was further submitted that as the appellant did not receive any redress from the management for her grievances, she tendered the resignation letter of 7th July, 2011, stating the reasons for tendering resignation as unfair treatment by the management. However, the appellant withdrew the letter five days prior to the acceptance of the resignation.

Thereafter, the appellant informed the respondent that she tendered her resignation because of the pressure exerted by the restaurant manager who was the head of the division where she was working. It was submitted that the learned President of the Labour Tribunal held that the appellant's club failed to rebut the appellant's evidence by calling the restaurant manager. Further, the respondents did not challenge the appellant's position by cross-examining her on the aforementioned points. Moreover, it was held that the resignation given by the appellant is not voluntary but instead due to pressure exerted on her by the management.

In the circumstances, the learned President of the Labour Tribunal held that the termination was unlawful and unjust and granted compensation to the appellant by the Order dated 24th April, 2014. However, it was submitted that in calculating the amount of compensation, mistakenly 8 years was taken into account instead of the period of service for 18 years. Nevertheless, without delay, the learned President corrected it under Regulation 29 of the Industrial Dispute.

Written Submissions on behalf of the respondent

The learned counsel for the respondent submitted that the appellant tendered her resignation dated 7th July, 2011, giving one month's notice and stated that she will be resigning from service with effect from the 7th of August, 2011. The Labour Tribunal held that as the contract of employment did not have a clause regarding the period of giving a resignation, the acceptance of the resignation tendered by the appellant was necessary.

The counsel further submitted that for the respondent, the appellant having given a valid notice of resignation, was not entitled in law to withdraw the said notice of resignation and it is not necessary to accept her resignation. Furthermore, it was submitted that the learned President of the Labour Tribunal has failed to consider whether acceptance of resignation was required

in law for the resignation to take place. In the circumstances, it was submitted that the learned judge of the Provincial High Court correctly arrived at the finding that the Order of the learned President of the Labour Tribunal had error on the face of the record.

Moreover, the Labour Tribunal proceeded to change the Order purportedly in terms of Regulation 29 of the Industrial Disputes Act. It was submitted that Regulation 29 has no application to a Labour Tribunal exercising jurisdiction under and in terms of section 31 (b) (1) (a) of the Industrial Disputes Act.

Further, it was submitted that the reference to the award or decision to be published in the Gazette makes it abundantly clear that this Regulation does not apply to a Labour Tribunal exercising jurisdiction in terms of section 31 (b) (1) (a) of the Industrial Disputes Act because there is no provision in law for a normal Labour Tribunal order to be published in the Gazette. It is only awards and orders made in arbitrations are published in the Gazette in terms of the Industrial Disputes Act, 1958.

Therefore, it was submitted that the Order of the Labour Tribunal to change its prior Order was made without jurisdiction and was an error of law on the face of the record. It was further submitted that the learned High Court judge of the Provincial High Court Holden in Colombo correctly arrived at the finding that the Labour Tribunal has no jurisdiction to change its own Order after it was delivered. Accordingly, it was submitted to dismiss this appeal.

Did the Honourable High Court Judge err in law when she decided that Regulation 29 of the Industrial Dispute Regulations 1958 is not applicable to Labour Tribunal?

Regulation 29 of Industrial Dispute Regulations, 1958 states;

> *"An **Industrial Court** or an **arbitrator** or a **Labour Tribunal** may, in any awards or decision or order made by such Court, arbitrator or **Tribunal correct any clerical error or mistake due to any oversight.** Where any such correction is made after the date by which the award or decision is published in the Gazette, such correction shall also be published in the Gazette in like manner as the original award or decision."*
>
> [emphasis added]

A careful consideration of the said Regulation shows that it is applicable to the Industrial Courts, arbitrators and Labour Tribunals. The phrase "*where any such correction is made after the date by which the award or decision is published in the Gazette, such correction shall also be published in the Gazette in like manner as the original award or decision"* applies to situations where Industrial Courts, arbitrators or Labour Tribunals exercise jurisdiction with regard to industrial disputes. However, the said Regulation also applies when the Labour Tribunal exercise jurisdiction under section 31 B (1) of the Industrial Dispute Act. Therefore, the said Regulation confers power on the Industrial Court, arbitrator and Labour Tribunal to make corrections to their awards, decisions and Orders.

In any event, any court or Tribunal has inherent jurisdiction to correct any clerical error or mistake done to any oversight. Therefore, the Labour tribunal did not err in correcting the clerical errors in the Order under reference.

Did the Honourable Judge of the High Court err in law when she decided that the appellant terminated her service by tendering voluntary resignation?

The resignation letter of the appellant stated that she tendered her resignation due to unfair treatment in the workplace by the manager, the lack of redress to her complaints, and not being given the due salary increment. The resignation of an employee must be voluntary, and it cannot be tainted by any element of influence by the employer or by a superior officer. The evidence led at the Labour Tribunal shows that her resignation was a result of the ill-treatment she received by her superiors. Hence, the resignation was not given voluntarily. Furthermore, a resignation tendered by an employer is a unilateral termination of contract by the employee. Hence, if tendered under duress, it amounts to constructive termination. Thus, the High Court erred in holding that the appellant terminated her services voluntarily.

Did the Honourable High Court Judge misinterpret and misapply the established legal principles applicable for the resignation of the employment and thereby commit an error of law?

It is pertinent to note that the appellant withdrew the letter of resignation before it was accepted by the respondent club. Thereafter, the respondent club conducted the domestic inquiry and informed the appellant that the respondent club accepted the resignation which was withdrawn by the employee. However, once the resignation is withdrawn, there is no valid resignation that can be accepted.

A similar view was expressed in ***Virendera Chand v. The Thar Anchalic Gramin Bank and Anr (*1991) LLR 564 (Raj.HC)** which held;

> *"If an employee tenders his resignation during pendency of inquiry which is not accepted by the management but terminated the services of the employee after enquiry on the basis of resignation, such termination will be illegal."*

In the circumstance, the High Court erred in law by allowing the appeal filed by the respondents.

In view of the above, the other question of law is not answered.

Accordingly, appeal is allowed.

The judgment of the High Court dated 23rd of September, 2016 is set aside. The Order of the Labour Tribunal dated 24th of April, 2014 is affirmed.

Judge of the Supreme Court

Yasantha Kodagoda PC, J
I agree

Judge of the Supreme Court

Achala Wengappuli, J
I agree

Judge of the Supreme Court