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 Section 31D of the Industrial Disputes Act No. 43 of 1950 as amended by Industrial Disputes (Amendment) Act No. 32 of 1990, read with Supreme Court Rules 1990.

S.A.D.T. Jayathilaka
25, Alehiwatta Road
Welisara, Ragama.

SC Appeal 92/2011
SC(HCCA) LA No. 07/2011
WP/HC Colombo HCRA.216/08
LT Application No. 2/1512/

Presently residing at 90/2, Palliyawatte, Hendala, Wattala.

Applicant-Petitioner-Appellant

Vs

1. Peoples' Bank,
2. General Manager,
3. Chief Manager- Human Resources,
4. Assistant General Manager-Human Resources,
5. Chief Manager-Audit

All of People's Bank
No. 75, Chittampalam A. Gardiner Mawatha
Colombo 02.

Respondent-Respondent-Respondents

Before : Hon. Tilkawardane, J.
Hon. Dep, P.C. J.
Hon. Wanasundera, P.C. J.

Counsel	:	Upul Ranjan Hewage with S.H.G. Amarawansa for the Applicant-Petitioner-Appellant Manoli Jinadasa with Janath Jayasundere for the Respondent-Respondent-Respondent
Argued on	:	05.10.2012
Decided on	:	02.04.2014

Priyasath Dep, PC. J.

The Applicant-Petitioner-Appellant (hereinafter referred to as the Applicant) filed a Application in the Labour Tribunal under section 31B of the Industrial Disputes Act alleging that his services were terminated unlawfully and unjustly by the People's Bank which is the Respondent-Respondent-Respondent (hereinafter referred to as the Respondent) to this Application.

The Respondent objected to the Application filed in the Labour Tribunal on the basis that the Application is time barred. The tribunal directed both parties to file written submissions and accordingly written submissions were filed. The learned President of the Labour Tribunal after considering the submissions filed by the parties, in his order dated 14-11-2008 upheld the objections and dismissed the Application on the basis that the Application was filed out of time.(time barred/prescribed)

Being aggrieved by the order of the Labour Tribunal, the Applicant filed a Revision Application to the High Court of the Western Province holden in Colombo. The Respondent raised the following objections in the Revision Application.

(a) The application is bad in law as the Applicant had failed to mention in the Caption the correct section under which the revisionary jurisdiction of the High Court was invoked.

(b)The Applicant had failed to annex all the relevant and material documents which is necessary to determine this Application

(c)The Applicant failed to appeal against the order which is the remedy specified by law.

(d) The Applicant had failed to establish exceptional circumstances to invoke the revisionary jurisdiction of the Court.

(e)The Application was filed out of time and it is time barred (prescribed) .

The High Court proceeded to deal with the main issue as to whether the application to the Labour Tribunal was filed out of time or not. By its order dated 06.01.2010, the High Court affirmed the order of the Labour Tribunal which held that the application is filed out of time.

Being aggrieved by the judgment of the High Court, the Applicant filed a Special Leave to Appeal Application in SC (HC) LA 7-2011 and obtained leave on the following questions of law.

(1) Did the High Court of Western Province err in law in not giving effect to the amendment to section 31B.(7)of the Industrial Disputes Act by the amending Act No. 21 of 2008, by which the time limit was increased to six months. (suggested by learned Counsel for the Petitioner)

(2) Was the revisionary jurisdiction of the Provincial High Court properly invoked by the Petitioner ? (Suggested by learned Counsel for the Respondent.)

I will first deal with the substantial question of law raised by the learned Counsel for the Respondent as to whether the revisionary jurisdiction of the Provincial High Court was properly invoked by the Petitioner or not. The Respondent submits that the Revision Application is defective and for following reasons, the High Court should have dismissed the Application in limine:

i. The caption in the revision application is defective as it failed to state the correct provision under which the jurisdiction was invoked.

ii. The Petitioner has failed to annex all the relevant and material documentation which is necessary to determine the application.

iii The Application for revision is not accompanied by a duly prepared affidavit;

iv. There is an alternative remedy specified by law against the order of the Labour Tribunal which the Petitioner has failed to resort to ;

v. The Petition does not disclose any exceptional circumstances which justifies the invocation of the revisionary jurisdiction which is a discretionary remedy;

In the caption to the Revision Application filed in the High Court it was stated that Revision Application is made under section 7(2) of the Industrial Disputes(Amendment) Act No. 32 of 1990. Section 7 (2) deals with the time limit within which the appeals to be concluded by the High Court, Court of Appeal and the Supreme Court respectively (as the case may be.) The Revision Application does not refer to the correct section of the amending Act. It is to be observed that the correct section is the section 4 of the amending Act . The section 4 repealed section 31D of the principal enactment and substituted a new section which gives a right of appeal to the High Court and confers jurisdiction on the High Court to hear and determine

appeals on questions of law from the orders of the Labour Tribunal and lays down the procedure for the appeal. It appears that the Petitioner instead of citing section 4 of the amending Act No.32 of 90 had inadvertently referred to section 7 (2) of the said Act. I am of the view that this defect was a curable defect. The application was filed under the amending Act, which is the applicable law and in the proper forum. Therefore the Application should not be dismissed.

The Counsel for the Applicant cited *Peiris v. the Commissioner of Inland Revenue* 65 NLR 457. It was held that:

> " It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another statute which conferred that power".

This case was followed in *Kumarathunge v. Samarasinghe* 1983 2SLLR 63 and *Edirisuriya V. Navarathnam* (1985) 1SLR 100and in several other cases.

It is settled law that quoting a wrong section will not render an act illegal so long as there is authority, jurisdiction or power given by the same statute or by another statute.

The Respondents had taken up the position that the Applicant should have filed an appeal rather than a revision application. It is the submission of the learned Counsel for the Respondent that when there is an alternative remedy available, the Applicant had failed to resort to that remedy.

The question is whether the order made by the Labour Tribunal is a final or an interlocutory order. The Labour Tribunal did not go into the merits of the case and dismissed the Application on the basis of preliminary objection raised by the Respondent . If the objection was overruled inquiry could proceed and the order made in the inquiry will be the final order. The learned President of the Labour Tribunal referred to the order as a Preliminary Order. Therefore, order made in respect of the preliminary order in a strict sense is not a final order disposing the case. In such a situations revision applications are filed to revise such orders. The approach adopted in *Ranjith v. Kusumawathi* 1998 3 SLR 232 applicable to this case

In civil cases where Civil Procedure Code applies Leave to Appeal /Revision Applications are filed against the orders which are not final. Although Appeal is available against orders of Labour Tribunal , filing a revision application in respect of an order which is not final is not repugnant to the established practice in our courts.

Assuming for the purpose of argument the appeal is the proper remedy, a question will arise as to whether a party could invoke the revisionary jurisdiction of the High Court. The Courts have held that even in cases where appeal is available if exceptional circumstances are present Court could act in revision. Revisionary jurisdiction is a is a

discretionary remedy invoked by the parties and as a rule exceptional circumstances should be there for the court to act in revision. On the other hand court also has a wide discretion to entertain applications for revision even in the absence of exceptional circumstances pleaded by the party invoking the jurisdiction of the Court if there is an important question of law to be considered. In the present application deals with interpretation of a statute which has general and public importance and not confined to the particular application. The Learned Counsel for the Applicant cited the cases *Rustom v. Hapangama*(1978-79) 2SLLR 225 and *Rasheed Ali Vs. Mohamad Ali* 1988 SLLR 262 in support of his argument.

In *Rustom v. Hapangama* (supra) it was held -

> ' The powers by way of revision conferred on the Appellate Court are very wide and can be exercised whether an appeal has been taken against an order of the original Court or not. However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are dependent on the facts of each case.
>
> 'Considering the facts and circumstances of the present case there were no such exceptional circumstances disclosed as would cause the Appellate Court to exercise its discretion and grant relief by way of revision. Unless there was something illegal about the order made by the trial Judge which has deprived the Petitioner of some right, the justice of the cause required that the Appellate would not in the circumstances of this case grant the Petitioner the indulgence of exercising its revisionary powers and the preliminary objection must therefore be upheld.'

In the case *Ameed Vs. Rasheed* (1936) 6 C.L.W. 8.the Supreme Court refused to exercise its discretion. Abrahams, C.J. said at page 9

> " It has been represented to us on the part of the petitioner that even if we find the order to be appealable, we still have a discretion to act in revision. It has been said in this court often enough that revision of an appealable order is an exceptional proceeding, and in the Petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal".

Finally in the case of *Alima Natchair Vs. Marikar et al,* (1945) 47 N.L.R. 81. Keuneman, S.P.J. said in a short judgment of six lines –

> "In the circumstances we should be slow to exercise our discretion to allow an application in revision in view of the fact that no appeal has been taken in this case".

Referring to series of cases including the cases cited above, Vythialingam J in *Rustom v. Hapangama (supra)* held that-

> "This Court has the power to act in revision even though the procedure by appeal is available, in appropriate cases. The question which has now to be decided is whether the instance case is an appropriate case in which we should exercise our discretionary powers of revision. In his petition and affidavit the Petitioner has not set out the reasons for his seeking this method of rectification of the order rather than the ordinary method of appeal. Nor has he set out any exceptional circumstances as to why we should grant him the indulgence of exercising our revisionary powers when he could have appealed against the order with leave".

In the instant case the Applicant is challenging the order made by the President of the Labour Tribunal for the reason that the Tribunal misinterpreted the applicability of Act No 20 of 2008 and deprived him of the extended period of time given by the amending Act to challenge the termination of his services by the Respondent Bank. As there is an important legal issue involved in the Revision Application the Learned High Court judge correctly disregarded the preliminary objections and made order regarding the Applicability of Industrial Disputed(Amendment) Act No 21 of 2008.

The other important preliminary objection raised by the Counsel for the Respondent is that the Applicant had failed to comply with the Court of Appeal Rules, especially Rule 3. These Rules are made applicable to High Court exercising appellate and revisionary jurisdiction. Rule 3 reads thus:

> (a) Every Application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero moto or at the instance of any party, dismiss such application.
>
> (b) Every application by way of revision or restitutio in integrum under Article 138 of the constitution shall be made in like manner together with copies of the relevant proceedings(including pleadings and documents produced), in the Court of First instance, tribunal or other institution to which such application relates.

The applicant in this case had filed the order of the Labour Tribunal and few documents which are not certified. According to the learned Counsel for the Respondent, the Applicant had failed to submit all material and relevant documents including the written submissions filed by the Respondents.

In this case the main issue is the interpretation of section 31D7 of the Industrial Disputes Act as amended by Act No. 21 of 2008. Therefore, the most important document is the Order of the Labour Tribunal which was annexed to the Petition and

affidavit of the applicant. Other documents are not essential documents . Therefore, there is no prejudice caused to the Respondent.

The Respondent has cited the case of the *Ceylon Electricity Board and nine others v. Ranjith Fonseka* 2008(BALR) Part ii page 155. In that case there were so many defects and irregularities and for that reason the action was dismissed. The Supreme had observed that :

> " it is quite evident that the petition filed before this Court is teeming with mistakes and irregularities".

This Revision Application that was filed in the High Court cannot be compared with that case. Therefore the High Court is correct in not rejecting the application for non compliance of the above rule.

I will now deal with the following substantial question of law raised by the learned Counsel for the Applicant.

Did the High Court of Western Province err in law in not giving effect to the amendment to section 31B.(7)of the Industrial Disputes Act by the amending Act No. 21 of 2008, by which the time limit was increased to six months?

In order to answer the above question of Law it is necessary to refer to the facts of this case .According to the facts of this case, the Respondent by its letter dated 05.12.2007 terminated the services of the Applicant. The Applicant stated that he received the letter of termination only on 10.01.2008. (The first letter was send to a wrong address and it was returned to the Bank.) The Respondent Bank , in its answer stated that the Bank had delivered the letter on 14.01.2008.(in addition to posting of the letter) At the time of the receipt of the letter of termination the Industrial Disputes (Amendment) Act No 11 of 2003 was in force and an Application to the Labour Tribunal shall be made within three months. Three months period lapsed on 10.04.2008. The Application to the Labour Tribunal was filed on 04.06.2008, that is more than three months and less than six months after the receipt of the letter of termination. Industrial Disputes (Amendment) Act No. 21 of 2008 which came into force on 28.03.2008 extended the time limit to six months and the Applicant claimed that he is entitled to the benefit of the Amendment as his Application was filed before six months and his Application is within time. Applicant's position is that the law applicable is the law in force at the time of filing of the Application. The Respondent on the contrary argued that the law applicable is the law in force at the time of the termination of services of the Applicant. As the Applicant failed to file the Application within three months, it was out of time and for that reason the learned President of the Labour Tribunal and the High Court were correct in holding that the Application is time barred/ prescribed.

The Industrial Disputes (Special Provisions) Act No. 53 of 1973 which introduced section 31B. (7) placed a time limit for filing of Applications. Section 31B7 states thus "every application to a Labour Tribunal under paragraph (a) or (b) of sub section(1)

of this section in respect of any workman shall be made within a period of six months from the date of termination of the services of that workman." The Act No. 11 of 2003 reduced the time limit to three months. This time limit was again changed by Act No. 21 of 2008 by increasing the time limit to six months.

This position could be summarized in the following manner:

(a) From 1973 to 31.12.2003 under Act No 53 of 1973 the time limit was six months.

(b)From 1.1. 2004 to 27.03.2008 under Act 11 of 2003 the time limit was three months

(c)From 28.03.2008 under Act No 21 of 2008 the time limit was extended to six months.

It is an admitted fact that at the time of the termination of the Applicant's services the time limit for filing of an application is three months. The question that arises is whether the Applicant could get the benefit from the amendment which came into force on 28.03.2008. The learned Counsel for the Respondent both in the labour Tribunal and in the High Court argued that the Industrial Disputes (Amendment) Act No. 21 of 2008 is prospective and applies to Applicants whose services were terminated after the coming into force of the amending Act. It was further submitted that nowhere in the amendment it was stated that it has retrospective effect.

On the other hand the learned Counsel for the Applicant argued that procedural laws could be retrospective in effect. By enacting Act No. 21 of 2008 the legislature had considered the fact that three months time given to the workman is not sufficient and extended the time limit by reverting back to the position prevailed under Act No. 53 of 1973. It is the intention of the legislature to give relief to the workmen. In those circumstances the Court should adopt a liberal interpretation rather than a restrictive interpretation to give effect to the intention of the legislature.

Both parties in their written submissions cited numerous authorities from the text books on Interpretation of Statutes. The learned Counsel for the Applicant quoted several cases referred to in N.S. Bindra ,Interpretation of Statues(10^{th} edition, editors M.N Rao and Amitha Danda, pp 1486-1488) Among the authorities cited the following authorities are relevant to this case.

In *State of Bihar vs. Mhd Ismail* AIR 1966 Pat 1, *Kiran Devi Vs. Abdul Wahid* AIR 1966 ALL 105 it was held –

> "The law of limitation is, however, an artificial mode to terminate justifiable causes and has to be construed strictly with a leaning on the benefits to the suitor"

In *Usman Yusuf Kamani Vs. Foreign Exchange Regulation Appellate Board, New Delhi* (1980) MAH LJ 316 it was held-

> "Rules of limitation as distinct from rules of prescription are regarded and classified as matters pertaining to procedure"

Bindra by quoting the above cases remarked that-

> "As a rule statute of limitation being procedural laws must be given a retrospective effect in the sense they must be applied to all suites filed after they came into force. (NS Bindra-Interpretation of statutes 10th edition page 1486).

In *Belgaum District School Board Vs. Mohammad Mulla* (AIR 1958 Bom.377, p380) it was held that-

> " This general rule has got to be read with one important qualification, and that is ,if the statute of limitation if given a retrospective effect, destroy a cause of action which was vested in a party or makes it impossible for that party for the exercise of his vested right of action , then the courts would not give retrospective effect to the statute of limitation. The reason for this qualification is that it would inflict such hardship and such injustice on parties that the courts would hesitate to attribute to the legislature an intention to do something which was obviously wrong."

In *Jethmal Anor v Ambsingh AIR* 1955 Raj 97)referred to in Bindra's-Interpretation of Statutes Page 1487 (supra) it was stated-

> "Although a law of limitation is primarily a law relating to procedure and as such, comes into effect right from the moment it has been enacted and governs all proceedings instituted thereafter and thus has retrospective operation , when a subsequent law curtails the period of limitation previously allowed and such law comes into force at once it should not be allowed to have retrospective effect ,which it otherwise have so as to destroy pre-existing rights or suit, because the giving of such retrospective effect amounts to not merely a change in procedure but a forfeiture of the very right to which the procedure relates.

The learned Counsel for the Respondent submitted that the three months period lapsed before the coming into force of Act No. 21 of 2008. Therefore, Applicant is not entitled to claim extension of time given by the new amendment. According to the learned Counsel for the Respondent effective date of termination is 05-12-2008 the date of the letter of termination. The three months period lapsed on 05.03.2008 before the amending Act came into force on 28.03.2008. In support of this argument she cites section 31B.(7) Act No 11 of 2003 which reads thus:

> 'every application to a Labour Tribunal under paragraph (a) or paragraph (b) of sub section(1) of this section in respect of any workmen shall be made within a period of three months from the date of termination of the services of that workman.'

According to the wording of that section three months run from the date of termination. No where it is stated that three months period is reckoned from the date of the letter of termination. A question that would arise as to what is the effective date of termination. In other words whether the date given in the letter of termination or the date of receipt of the letter of termination.

According to the section 31B.(7) application shall be filed within three months from the date of termination. In the letter dated 5th December 2010 the services were terminated with effect from 08.03.2007, nearly nine months prior to the date of the letter of termination. If literal meaning is given Applicant's action was prescribed long before the sending of the letter of termination. Therefore, for the purpose of filing action the effective date should be the date on which the Applicant received the notice of termination. It is the practice that pending a domestic inquiry the services of the workman is suspended and he does not report for work and if his services are terminated employer should inform the workman.

In this case the Applicant in his application stated that he received the letter on 10-01-2008 and he filed the application on 04.06.2008.The Respondent- Bank in its answer had taken up the position that the letter was delivered on 14.01.2008. In the circumstances, if any of the dates mentioned above are taken as the date of receipt of the letter, the Applicants action was not prescribed on the date the Act No. 21 of 2008 came into force. In the labour Tribunal and in the High Court, the Bank had taken up the position that the Amending Act No. 21 of 2008 has no retrospective effect and the Applicant is required to file the application within three months and he had failed to file the Application within three months. The learned Counsel for the Respondent has taken up a completely a different stance and taken up the position that date of the letter of termination has to be considered as the effective date of termination. The learned Counsel for the Applicant countered this argument by stating that if the employer gives an earlier date in the letter or dispatch the letter long after the date of the letter, a grave prejudice will be caused to the Applicants Therefore, date of receipt of the letter has to be taken as the effective date. The Applicant states that the letter was received by him on 10.01.2008 and the Respondent Bank admitted that the letter was delivered on 14.01.2008. In the Labour Tribunal the date of the letter of termination was not taken as the date from which the time period should be counted.

The learned Counsel for the Applicant submits that the judgments given in Fundamental Rights cases are relevant for the purpose of deciding whether the action is time barred or not. In Fundamental Rights cases application shall be made within one month from the date of violation of the fundamental rights. The Court had accepted applications filed after 30 days if it is proved that the applicant came to know of the violation on a subsequent date or a later time. It is to be noted that in a Court of law judgments or orders are delivered in open court after notice to the parties. Therefore the date of delivery of the judgment/order is taken as the effective date. But in respect of executive or administrative decisions, decisions taken by individuals or entities in certain cases will come to the knowledge of the persons affected when it is communicated to them or they become aware of such decisions. The Supreme Court in

Fundamental Rights applications held that the date of receipt of the communication or the acquiring of knowledge is the effective date. The Learned Counsel for Applicant submits that the approach adopted by the Supreme Court in Fundamental Rights applications are relevant and applicable to this case. In support of his argument the learned Counsel for the Applicant cited the decision in *Gamaethige v Siriwardena* (1988) 1 SLR 384 where Mark FernandoJ held'

> "Three principles are discernible in regard to the operation of the time limit prescribed by Article (126(2). Time begins to run when the infringement takes place ; if knowledge of the part of the Petitioner is required (e.g. of other instances by comparison with which the treatment meted out to him becomes discriminatory), time begins to run only when both infringement and knowledge exist. The pursuit of other remedies judicial or administrative, does not prevent or interrupt the operation of the time limit. While the time limit is mandatory, in exceptional cases on the application of the principle *lex non cogit ad impossibilia*, if there is no lapse, fault or delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time.

This judgment was followed by Tilakawardena J in *De Silva vs Wickramarathne and others* 2011 (2) BLR 360

Therefore I hold that at the time the amending Act came into force, the Applicant's action was not time barred. The next question is whether the Applicant could avail himself of the extended time limit provided by the amending Act No21 of 2008. The cursus curie is to the effect that at the time the amending act came into force, if the action is not prescribed, a party is entitled to the extended period of time

In Attorney General v. Uplands Bus Company Ltd (56 NLR248) Gratien J held that-

> " Section 28 of the Wages Boards (Amendment) Act No. 5 of 1953, which alters the time-limit for prosecutions from one year to two years in regard to offences punishable under section 39(1) of the Wages Boards Ordinance No. 27 of 1941, applies not only to prosecutions for offences committed after the amending Act No. 5 of 1953 passed into law, but also to prosecutions for earlier offences other than those which had already become barred by limitation under the provisions of the principal Ordinance

The judgment of Gratien J in the above case was followed in *Hadji Omar v. Bodhidasa* 1994 2 SLLR P 191and *De Silva vs Weerasinghe* 1978-79-80-1 SLLR p334 and several other cases.

I find that a passage from Justice G.P. Singh's -Principles of Statutory Interpretation (5th Edition) at page 303 cited by the learned Counsel for Respondent is relevant to this case.

It was stated that "Statutes of Limitation are regarded as procedural and law of limitation which applies to a suit is the law in force at the date of the institution of the suit

irrespective of the date of accrual of the cause of action. The object of a statute of limitation is not to create any right but to prescribe periods of a statute of limitation within which legal proceedings may be instituted for enforcement of rights which exist under the substantive law. But, after expiry of the period of limitation, the right of suit comes to an end, therefore, if a particular right of action had become barred under an earlier Limitation Act, the right is not revived by a later Limitation Act even if it provides a larger period of limitation than that provided by the earlier Act.

For the reasons set out above, I hold that the Application filed in the Labour Tribunal is not time barred. Therefore I set aside the Judgment of the High Court of Colombo dated 06-01-2010 and the order dated 14-11-2008 of the Labour Tribunal of Colombo. The Labour Tribunal is directed to hold an inquiry under section 31C of the Industrial Dispute Act and make a just and equitable order.

Appeal allowed. No Costs.

Judge of the Supreme Court

Shiranee Tilakawardena, J.

I agree.

Judge of the Supreme Court

Eva Wanasudera, PC. J.

I agree.

Judge of the Supreme Court