

**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 154(p) of the Constitution  
read with Section 31DD of the  
Industrial Disputes Act (as amended)  
and Section 9 of the High Court of the  
Province (Special Provisions) Act  
No.19 of 1990.*

**SC APPEAL 131/2017**

SC (SPL) LA 252/2016

CP HCLTA 23/2015

LT NO 03/50/2004

I.A.S.N. Premalal (deceased),

No. 196/9,

Millange Kumbura,

Ranawana, Katugasthota.

**APPLICANT**

Badulpe Ramani Sepalika Pathirange,

No. 196/9,

Millange Kumbura,

Ranawana, Katugasthota.

**SUBSTITUTED-APPLICANT**

vs.

People's Bank,

No.75,

Sri Chiththampalam A. Gardner Mw,  
Colombo 02.

**RESPONDENT**

***AND***

People's Bank,  
No.75,  
Sri Chiththampalam A. Gardner Mw,  
Colombo 02.

**RESPONDENT-APPELLANT**

vs.

Badulpe Ramani Sepalika Pathirange,  
No. 196/9,  
Millange Kumbura,  
Ranawana, Katugasthota.

**SUBSTITUTED-APPLICANT-RESPONDENT**

***AND NOW BETWEEN***

Badulpe Ramani Sepalika Pathirange,  
No. 196/9,  
Millange Kumbura,  
Ranawana, Katugasthota.

**SUBSTITUTED-APPLICANT-RESPONDENT-**

**APPELLANT**

vs.

People's Bank,

No.75,

Sri Chiththampalam A. Gardner Mw,

Colombo 02.

**RESPONDENT-APPELLANT-RESPONDENT**

**BEFORE** : **VIJITH K. MALALGODA, PC, J**  
**S. THURAIRAJA, PC, J AND**  
**MAHINDA SAMAYAWARDHENA, J**

**COUNSEL** : Chanaka Kulatunga instructed by R. Thennakoon for the  
Substituted-Applicant-Respondent-Petitioner.  
Rasika Dissanayake with Shabbeer Huzair for the Respondent-  
Appellant-Respondent.

**WRITTEN SUBMISSIONS:** Substituted Applicant-Respondent-Appellant on 10<sup>th</sup>  
August 2017.

**ARGUED ON** : 02<sup>nd</sup> November 2022

**DECIDED ON** : 06<sup>th</sup> October 2023

**S. THURAIRAJA, PC, J.**

The husband of the Substituted Applicant-Respondent-Appellant filed an application in the Labour Tribunal of Kandy (hereinafter referred to as the "Labour Tribunal")

against the Respondent-Appellant-Respondent (hereinafter referred to as the "Respondent bank") for unlawful termination of his services. After an Inquiry, the Learned President of the Labour Tribunal held that, the termination of the services of the Applicant was unjust and inequitable and awarded compensation of Rs.1610105.20 (equivalent to 6 years salary and Rs. 250,000/- which was deducted from the Applicant's gratuity by the Respondent Bank after the domestic inquiry alleging that the Appellant has defrauded of Rs. 250,000/-) to the Applicant. Being aggrieved by the order of the Labour Tribunal, the Respondent Bank appealed to the Provincial High Court of the Central Province (hereinafter referred to as the 'High Court') seeking inter alia, to set aside the order of the Labour Tribunal. The Learned High Court Judge by her judgment had set aside the order of the Labour Tribunal. Being unsatisfied with the said order, the Substituted Applicant had preferred this appeal before us, special leave to appeal was granted on 29<sup>th</sup> June 2017, on the issues set out in paragraph '15 (i), (ii), (iii) and (iv)' of the petition dated 28<sup>th</sup> November 2016. When this matter was taken on 2<sup>nd</sup> November 2022, both parties have agreed to confine their arguments on the questions of law referred to in paragraph '15 (i) and (ii) of the petition dated 28<sup>th</sup> November 2016 reads as follows;

*"(i) Is the Order of the Honourable Judge of the High Court of the Central Province against the weight of the evidence led at the inquiry before the Labour Tribunal.*

*(ii) Is the Order of the Honourable Judge of the High Court of the Central Province bad in law so far as coming into conclusion that there is no specific procedure for substitution soon after the death of the Applicant in the original Court."*

Substituted Applicant-Respondent-Appellant filed her written submissions on 10<sup>th</sup> August 2017 and both parties have advanced their oral submissions.

I find it pertinent to set out the material facts of the case prior to addressing the question of law before us.

Iddamalgoda Arachchige Sunil Neksil Premalal (now deceased) (hereinafter sometimes referred to as the "Applicant") was an employee of the People's Bank (hereinafter sometimes referred to as the "Respondent Bank") from 1<sup>st</sup> August 1978 as a Grade VI-Clerk. The Applicant gradually rose in rank and was appointed as a Staff Assistant-Grade I of the Respondent Bank. In the material time relevant to this application, Applicant worked as a Staff Assistant-Grade I at Peradeniya Branch of the Respondent Bank and is alleged for defraud of Rs. 250,000/- and this was considered as a serious misconduct. The Applicant was served with a charge sheet on 25<sup>th</sup> July 2002 setting out three charges namely,

- (1) On or about 6<sup>th</sup> September 2001 the applicant had committed theft and dishonestly misappropriating the said sum of money Rs. 250000/- from the 'cash bag' of another employee namely Wijesundera who was on leave;
- (2) Reporting for work on or about 19<sup>th</sup> September 2001 without the approval or the authority of any superior officer and leaving the office without placing the signature on the attendance register;
- (3) As a result of the two acts referred to above failure to uphold the trust and confidence the Respondent Bank had placed on the Applicant.

After this incident the Respondent Bank considered the past record of the Applicant, there it was found that he had been warned, cautioned, punished with suspension of increments and promotions. Further he was punished for gross acts of discipline. Consequently, a domestic inquiry was conducted by the Respondent Bank against the Applicant and was found guilty of serious misconduct and Applicant was dismissed from his service by letter dated 19<sup>th</sup> December 2003. The Applicant filed an application on 20<sup>th</sup> January 2004 before Labour Tribunal against the Respondent Bank for unlawful termination of his services seeking, inter alia, re-instatement in his service and/ or reasonable compensation.

The Respondent Bank filed its answer dated 20<sup>th</sup> February 2004 denying the position taken up by the Applicant and fixed the matter for inquiry on 6<sup>th</sup> April 2004. Since the Respondent Bank admitted the termination of service of the Applicant, the Respondent Bank was directed to commence the inquiry on 6<sup>th</sup> April 2004. However, upon a personal difficulty of the Counsel of the Respondent Bank, matter has been re-fixed for 7<sup>th</sup> July 2004 and 19<sup>th</sup> July 2004. When the matter was taken up for inquiry on the 19<sup>th</sup> July 2004, the Counsel for the Respondent Bank moved the Labour Tribunal that there is a criminal case regarding this issue is pending before the Magistrate Court and moved to lay by the matter until final determination at the Magistrate Court, with the consent of both parties the Labour Tribunal had laid by the case. This case was not taken up for more than 2 ½ years, then the Applicant filed a motion on 31<sup>st</sup> of January 2007 to re-open the inquiry. It was revealed that, the Honourable Attorney General has instructed the learned Magistrate by letter dated 19<sup>th</sup> June 2006, that there is no evidence against the Applicant, therefore that he be discharged from the charges against him. Accordingly, the learned Magistrate had discharged the suspect (Applicant).

The learned president of the Labour Tribunal has fixed this matter for inquiry for 25<sup>th</sup> of April 2007 and evidence of Kalutharage Harreld Lal Fernando, the Deputy Manager- Human Resource Management Department of the Respondent Bank was lead and marked documents R-1 to R-7. Further inquiry was fixed for 6<sup>th</sup> May 2008. On that date the Applicant was absent and his wife Badulpe Ramani Sepalika Pathirana appeared before Labour Tribunal and informed that her husband had passed away on 1<sup>st</sup> of April 2008 and moved to substitute herself on behalf of her husband (Vide Journal entry dated 6<sup>th</sup> May 2008 at page 30 of the High Court brief). The details of the substitution will be discussed latter part of this judgment.

Thereafter, evidence of K. Surendra Premathilake- Retired Bank Officer, P. Premaratne Rajapakse- Retired Bank Officer, S.M. Bandula Lal Kumara- Deputy Manager, Senarath Palihawadana- Manager, W. M. Wijesundera- Retired Bank Officer, R.M. Nawarathna-

Retired Bank Officer, Indrani Harischandra- Retired Bank Officer and W.M. Karunawathie Menike- Retired Bank Officer were lead on behalf of the Respondent Bank. There was no evidence lead by the Applicant nor the Substituted Applicant. After both parties closed their case, they filed their written submissions.

On 30<sup>th</sup> November 2015, the Learned President of the Labour Tribunal delivered her Order and held that the termination of the Applicant's service by the Respondent Bank was unjustifiable and inequitable, and thus ordered the Respondent Bank to pay the Appellant a sum of Rs. 1,610,105.20 being a sum equivalent to 06 years' salary and Rs. 250,000/- (which was deducted from the Applicant's gratuity) as compensation.

Being aggrieved by the order of the Labour Tribunal, the Respondent Bank appealed to the High Court seeking inter alia, to set aside the order of the Labour Tribunal. The Learned High Court Judge by her judgment had set aside the order of the Labour Tribunal. Being aggrieved with the said Judgment, the Substituted Applicant had preferred this appeal.

Now I wish to deal with the second question of law which deals with substitution at the Labour Tribunal.

The learned High Court Judge decided in her judgment and says that,

“කෙසේ වෙතත් කම්කරු විනිශ්චය සභා නීතිය යටතේ ඉල්ලුම්කර වගදන්තරකරු මිය යනමත් පසුව ඒ වෙනුවට ඔහුගේ උරුමකරුවෙකු ආදේශ කිරීමට නීතියේ කුමන ප්‍රතිපදනක් අදාළ කර ගන්නාද යන්න පිළිබඳව මෙම අධිකරණයට වටහාන නොහැක.”

“However, this Court is unable to understand as to what provision of law relating to Labour Tribunals applied to substitute an heir of the in room of the Applicant -Respondent after his death.”

I perused the petition submitted to the Provincial High Court of Kandy dated 29<sup>th</sup> December 2015 by the Respondent Bank under CP/HCLTA 23/2015, and found that the questions of law raised by referring to paragraph 10 of the Petition does not raised any issue about the substitution procedure which was made before the learned President of the Labour Tribunal. I am puzzled to understand how the learned Judge of the High Court discussed and decided an issue about the substitution procedure which was not raised by the said petition of appeal nor in the written submissions filed by the parties.

As I stated above, on 6<sup>th</sup> of May 2008, the wife of the Applicant was present before the Labour Tribunal and she was informed of the procedure to be followed by the learned President of the Labour Tribunal in the presence of the Respondent Bank officials and the Substituted Applicant adhered to those instructions and filed an Affidavit, Death Certificate of the deceased Applicant and Marriage Certificate of the deceased Applicant and copy of her National Identity Card.

It is evident in the brief that she had filed an Affidavit, Death Certificate of the deceased Applicant and Marriage Certificate of the deceased Applicant and copy of her National Identity Card and same were served on the Respondent Bank.

On 28<sup>th</sup> July 2008 matter was called before the Labour Tribunal and Respondent Bank was absent and unrepresented. The learned President of the Labour Tribunal ordered the Assistant Secretary to send copies of the records to the Respondent Bank which was sufficiently complied with.

The matter was fixed for 9<sup>th</sup> October 2008, on that date, both parties were present and the Substituted Applicant supported for substitution. The Respondent Bank not only not raised any objections but also agreed to continue with the proceedings before the Labour Tribunal. The relevant portion of the proceedings dated 9<sup>th</sup> October 2008, reproduced as follows; (vide page---- High Court appeal brief)

*"මෙම නඩුවේ ඉල්ලුම්කරු මියගොස් ඇති හෙයින් ඔහු වෙනුවෙන් ඔහුගේ බිරිඳ ආදේශ කිරීම සඳහා ඉල්ලුම්කර පර්ශවය විසින් කර ඇති ඉල්ලීම*



*සම්බන්ධයෙන් වගදන්කරකරණ පරිශීලකයා විරුද්ධත්වයක් නැති හා අද දින එයට එකඟව ඉදිරියට නඩු විභාගය පවත්වනු ලබන යමටත් සුදුනම් හෙයින් විභාගයට ගනිමි."*

*The above Sinhala proceedings were unofficially translated for the purpose of understanding as follows:*

*Since the Applicant in this case died, his wife had made an application to substitute her. Respondents had no objections regarding the said application, and prepared to continue with the case further, Hence I am taking it for inquiry*

After the substitution of Badulpe Ramani Sepalika Pathirana in the room and place of the Applicant I.A.S.N. Premalal, the inquiry proceeded and the Respondent Bank lead the evidence of seven witnesses which were recorded and appears in the high court brief from page no.39 to 520.

As discussed above there is no objection raised at the time of substitution. As per the law, which I wished to discuss later, I do not see any illegality of the procedure adopted by the learned President of the Labour Tribunal. The Respondent Bank is estopped raising the issue of substitution before the High Court. Anyhow, I do not see that the parties have raised an issue of substitution before the High Court. Since the matter was mentioned in the judgment of the High Court and raised as a question of law before this Court, I wish to analyse the legality of the provisions for substitution.

Section 31 C (2) of the Industrial Disputes Act (Amended) No.43 of 1950 reads as follows;

*"31 C (2) - A labour tribunal conducting an inquiry shall observe the procedure prescribed under section 31A, in respect of the conduct of proceedings before the tribunal."*

In numerous cases this Court held that there is no procedure prescribed in the Industrial Disputes Act. But the President of the Labour Tribunal is empowered to make provisions for substitution, subject to rules of natural justice. In **Amerajeewa v University of Colombo (1993) 2 SLR 327** (Five Judges Divisional Bench) Justice Mark Fernando in agreement with all other Judges held as follows (at page 331),

*"While it is correct that the Industrial Disputes Act does not prescribe the procedure to be followed in such a situation, yet **section 31C (2) confers powers upon the Labour Tribunal to devise a suitable procedure. It was therefore incumbent upon the Tribunal to have taken some appropriate steps to give notice to interested persons so as to satisfy the basic requirements of Natural Justice.**"*

(Emphasis added)

In the present case as I stated in detail above, the learned President of the Labour Tribunal had asked the Substituted Applicant to file an Affidavit, Marriage Certificate and Death Certificate and support the matter which is similar to the requirements stated in the Civil Procedure Code for substitution. Considering the above judgement, the President of the Labour Tribunal had complied with and proceeded for adoption. With regret, the learned High Court Judge had not taken note of the judgment of the Divisional Bench above mentioned. Considering all I am convinced that the learned President of the Labour Tribunal had followed the proper procedure hence the adoption is legal and compatible.

Now I see the learned Judge of the High Court dismissed the order of the President of the Labour Tribunal at the stroke of a pen without giving reasons.

*"කෙසේ වෙතත් කම්කරු විනිශ්චය සභාව විසින් ඉල්ලුම්කාර වගඋත්තරකරුට සිය ඉල්ලීම සඳහා සහන ලබා දී ඇත. නමුත් මෙහිදී වග-උත්තරකාර අභියාචක සඳහන් කර සිටින්නේ ඉල්ලුම්කාර වගඋත්තරකරුගේ මෙම හැසිරීම සාක්ෂිකරුවන්ගේ සාක්ෂි සහ ලේඛන මගින් කම්කරු විනිශ්චය සභාව විසින් එය සිය අවධානයට යොමුකර නොමැති බවය. කම්කරු*

විනිශ්චය සභාව විසින් දෙන ලද නින්දාව සලකා බැලීමේදී මෙම අධිකරණයට ද එය පෙනී යනු ඇත.”

An approximate unofficial translation of the above has been provided below for ease of reference.

*“Regardless, the Labour Tribunal granted relief to the Applicant-Respondent in his claim. However, the Respondent-Appellant states that this conduct of the Applicant-Respondent has not been brought to its notice by the Labour Tribunal through the evidence of witnesses and documents. This conduct has, however, come to the attention of this Court upon perusing the judgment passed by the Labour Tribunal.”*

Considering the evidence led before the Labour Tribunal which commenced from page no. 14 to 720 and the order of the Labour Tribunal which consists of 23 pages., I find I find there are contradictions per se and inter se in the evidence led by the Respondent Bank. The judgment of the High Court Judge runs into four pages (actual content of four pages in double space typed) has not analysed the evidence, corroborations and nor contradictions. It is not a healthier practice to turn down a judgment of the original court without giving adequate reasons. Superior Courts time and again insisted that order/judgment made based on facts and evidence will not be rejected without giving proper and satisfactory reasons hence the judgment of the learned High Court Judge cannot be accepted of dismissing the order of the learned President of the Labour Tribunal without giving reasons.

With the reasons mentioned above, I answer the first question of law affirmatively. After careful consideration, I answer the second question of law affirmatively.

I find that the learned President of the Labour Tribunal has awarded a compensation equivalent to 6 years of Applicant’s salary. I find that, the calculation was done from the date of interdiction up to the date retirement. The President of the Labour Tribunal slipped in her mind that the Applicant had died before reaching the age of retirement.

That is 4 years and 3 months from the date of interdiction and he had passed away. But the President of the Labour Tribunal computed compensation up to the age of retirement.

There is no scheme of calculating compensation in the Industrial Dispute Act. The calculation of compensation is very subjective and it depends on several factors, to name a few; type and nature of employment, period he had served, past conduct of the employee, contribution to the employer/establishment, future prospects, type of the offence committed or the reason for termination etc. Further, when computing the compensation, the tribunal should be mindful the age of the Applicant, the service he had rendered and the future capability of doing a job etc., A person cannot stay at home and say that, he should be paid for not being employed. The employee should find a suitable job either equivalent or less salary, within a reasonable period of time and he cannot be unemployed without acceptable reasons.

In **Ceylon Transport Board v A.H. Wijeratne (1975) 77 NLR 481**, at page 487 Vythialingam. J held that,

*"The President also said that the workman was 51 years old and that he had not been able to obtain employment elsewhere. At the time that he gave evidence the workman said he was fifty-one years old. But nowhere in his evidence did he say that he was unemployed or that he had not been able to secure employment elsewhere. He did not produce any evidence that he had tried to obtain alternative employment and was unsuccessful or that having regard to his qualifications, his aptitude and his special suitability for any particular type of work it was not possible to him to secure alternative employment. He did not even say so. So that the President's statement in regard to this matter is based on pure conjecture and is based on no evidence at all. Except for the bald statements the President has also given no reasons for the acceptance of the workman's*

*position that he has lost his pension rights and other benefits and the President has also based his findings that the workman has not been able to secure employment elsewhere on no evidence at all. There was no warrant therefore to award compensation on the basis that he would continue to be Unemployed for the rest of his life..."*

As Weeramantry, J. pointed out in the case of **The Ceylon Transport Board Vs. Gunasinghe (72 N. L. R. 76)** at page 83,

*"Proper findings of fact are a necessary basis for the exercise by Labour Tribunals of that wide jurisdiction given to them by statute of making such orders as they consider to be just and equitable. Where there is no such proper finding of fact the order that ensues would not be one which is just and equitable upon the evidence placed before the Tribunal, for justice and equity cannot be administered in a particular case apart from its own particular facts. "*

In **Ceylon Transport Board v A.H. Wijeratne** (supra) at page 498, Vythialingam J. after carefully analysing the law and the just and equitable concept held as follows,

*"The Labour Tribunal should normally be concerned to compensate the employee for the damages he has suffered in the loss of his employment and legitimate expectations for the future in that employment, in the injury caused to his reputation in the prejudicing of further employment opportunities. Punitive considerations should not enter into its assessment except perhaps in those rare cases where very serious acts of discrimination are clearly proved. Account should be taken of such circumstances as the nature of the employer's business and his capacity to pay, the employee's age. the nature of his employment, length of service, seniority, present salary, future prospects, opportunities for obtaining similar alternative employment, his past conduct, the circumstances and the manner of the*

*dismissal including the nature of the charge levelled against the workman, the extent to which the employee's actions were blameworthy and the effect of the dismissal on future pension rights and any other relevant considerations. Account should also be taken of any sums paid or actually earned or which should also have been earned since the dismissal took place. The amount however should not mechanically be calculated on the basis of the salary he would have earned till he reached the age of superannuation and should seldom if not never exceed a maximum of three years' salary."*

In **Caledonian Tea & Rubber Estate Ltd. V Hillman (1977) 79(1) NLR 421**, Justice Sharvananda stated that he was unable to subscribe to Justice Vythialingam's proposition of 3 year's salary and states that flexibility is essential and pointed out that circumstances may vary in each case and the weight to be attached to any particular factor depending on the context of each case, and accordingly, an amount equivalent to 7 years of monthly salary was granted as compensation. In **Cyril Anthony v Ceylon Fisheries Corporation [S.C. 57/85 - SC Minutes dated 06. 03. 1986]**, the Supreme Court awarded 7 years' salary as compensation to a dismissed workman. In exercising such a flexibility of determining the quantum of compensation, it was noted by Hon. Justice Dr. Amerasinghe in **Jayasooriya v Sri Lanka State Plantation Corporation (1995) 2 SLR 379** as follows;

*"In determining compensation what is expected is that after a weighing together of the evidence and probabilities in the case, the Tribunal must form an opinion of the nature and extent of the loss, arriving in the end at an amount that a sensible person would not regard as mean or extravagant but would rather consider to be just and equitable in all the circumstances of the case. There must eventually be an even balance of which the scales of justice are meant to remind us."*

After careful consideration, I find that the Applicant has not provided any evidence before the Labour Tribunal therefore, the calculation and awarding 6 years' salary as compensation by the President of the Labour Tribunal is arbitrary. After due consideration of the dictum pronounced by Justice Vythialingam in **Ceylon Transport Board v A.H. Wijeratne** (supra), I am in agreement with his Lordship, hence I decide to award compensation equivalent to 3 years' salary to be paid to the Substituted Applicant. While affirming the findings other than the computation of the compensation, of the President of the Labour Tribunal, I am hereby varying the order made regarding the compensation.

For the purposes of clarity, Two hundred and fifty thousand Rupees (Rs. 250,000/-) which was deducted from the gratuity payable to the Applicant, and Applicant's salary for 3 years as compensation, the calculation for which has been provided below.

<i>Gratuity deducted, now to be returned =</i>	<b>Rs. 250,000.00</b>
<i>Applicant's salary (monthly as November 2003) =</i>	<i>Rs. 18,890.35</i>
<i>Applicant's salary (3 years = 36 months) =</i>	<i>Rs. 18,890.35 x 36</i>
	<b>= Rs. 680,052.6</b>
	<i>= Rs. 250,000.00</i>
<i>Total amount payable to Applicant's Wife</i>	<i>= Rs. 680,052.60</i>
	<b>= Rs. 930,052.60</b>

Therefore, the total amount of Nine hundred and thirty thousand fifty-two Rupees and sixty cents (Rs. 930,052.60) is to be paid to the wife of the Applicant by the Respondent Bank as Compensation within three months of this Judgement. If the money is deposited at the Labour Tribunal, this amount plus proportionate portion of interest is to be paid to the Substituted Applicant from the said deposit, and the balance money and interest to be released to the Respondent-Bank.

***Appeal Allowed subject to limitations.***

**JUDGE OF THE SUPREME COURT**

**VIJITH K. MALALGODA, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J**

I agree.

**JUDGE OF THE SUPREME COURT**