

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 Provisions (SPL) Act No. 19 of 1990.

S.C. APPEAL. No. 70/2022

S.C. SPL. LA. No. 281/2019

WP/HCALT/05/17/Panadura

PN/25/24/2016

Textile, Garment and Clothing Workers'
Union (For Kurukulasuriya Sunil Fonseka)
465/3, New Kandy Road,
Peragas Junction,
Biyagama.

Applicant – Respondent – Appellant

Vs.

Diamond Cutters Limited
Panadura.

Respondent – Appellant – Respondent

BEFORE : **P. PADMAN SURASENA, J.**

JANAK DE SILVA, J.

ACHALA WENGAPPULI, J.

COUNSEL : Ms. Lakmali Hemachandra with Sahan Ginige for the Applicant – Respondent - Appellant

Chinthaka Mendis with Ms. Panchali Ilankoon for the Respondent – Appellant – Respondent

ARGUED AND

DECIDED ON : 01st February 2024

JANAK DE SILVA, J.

The Applicant – Respondent – Appellant (“Appellant”) invoked the jurisdiction of the Labour Tribunal claiming that his employment was unjustly terminated by the Respondent – Appellant – Respondent (“Respondent”).

The Respondent filed answer claiming that the name of the Appellant is incorrectly stated in the caption. In the original application, the Appellant was identified only as “Textile, Garment and Clothing Workers’ Union”.

The Appellant thereafter filed a motion on 29.08.2016 seeking permission of the Labour Tribunal to amend the caption. The amended caption was to read as “Textile, Garment and Clothing Workers’ Union (For Kurukulasuriya Sunil Fonseka)”.

The Respondent objected to the amendment. After having heard parties, the learned President of the Labour Tribunal allowed the application and directed the Appellant to file amended caption on or before 11.11.2016. The Appellant filed an amended caption on 10.11.2016 which was incorrectly dated as 09.11.2016. Thereafter, the Appellant filed another amended caption on 01.12.2016 without the permission of the Labour Tribunal and omitted to state that it was an amended caption.

When the inquiry commenced on 03.01.2017, the Respondent moved that the application be dismissed as the Appellant had filed a fresh application instead of an amended caption. The learned President of the Labour Tribunal overruled the objection and accepted the amended caption and allowed the Appellant to withdraw the application dated 13.05.2016 (*sic*).

Thereafter, the Appellant filed a correct amended caption with permission of Court and withdrew the wrongly dated amended caption filed on 10.11.2016.

After inquiry, the learned President of the Labour Tribunal held that the services of the Appellant were unjustly terminated and awarded relief.

The Respondent preferred an appeal to the Provincial High Court of the Western Province holden in Panadura. The only matter that the learned High Court Judge considered is the alleged defects in the caption of the several applications. The learned High Court Judge set aside the order of the Labour Tribunal on the ground that there was no valid application before the Labour Tribunal as there was no specific order made by the learned President of the Labour Tribunal accepting the defective caption.

Leave to Appeal has been granted on the following questions of law:

- (1) The said Order is contrary and inconsistent with the facts of the case.
- (2) The Learned Judge of the High Court has failed to consider that the Learned President of the Labour Tribunal has considered the preliminary objection by the Respondent and made several orders allowing the Petitioner to file amended caption.
- (3) The Learned Judge of the High Court has failed to consider that the Respondent has taken part in the trial after all objections were overruled by the Learned President of the Labour Tribunal and therefore cannot raise an issue on jurisdiction in appeal.

Before us, both parties agreed that by the amended caption filed before the learned President of the Labour Tribunal, only the caption has been sought to be amended and the body of the application was never amended except for the amendment made on the date of filing of the application.

In this context, the question that arises is whether the caption of an application made to the Labour Tribunal can be amended subsequently to cure a defect in the caption. The learned President of the Labour Tribunal proceeded on the basis that it is a curable defect.

In ***The Board of Trustees of the Tamil University Movement v. De Silva and Another*** [IV Sriskantha's Law Reports 127 at 131] the Supreme Court held that:

"It seems difficult to understand how Labour Tribunals, which are also "institutions for the administration of justice which protect, vindicate and enforce the rights of the people" according to Article 105(1) of our constitution can be expected to make just and equitable orders if their powers of amendment, where necessary, are not recognized".

In that case, the "Tamil University Movement" was named as the Respondent. The "Secretary Tamil University Movement" filed answer and claimed that the application could not be maintained against the "Tamil University Movement" as it was neither a natural or artificial person. The applicant thereafter sought to amend the caption to the application by substituting "The Board of Trustees of the Tamil University Movement" as respondent. This application was objected to but the Labour Tribunal allowed the amendment.

The respondent invoked the jurisdiction of the Court of Appeal and sought a writ of certiorari to quash the orders of the Labour Tribunal to amend the amendment. The Court of Appeal dismissed the application for the reason that although the Tamil University Movement per se was not a legal person, nobody would be misled as to the identity of the party against whom relief is sought.

The Supreme Court upheld this decision and held that a liberal approach should be followed in allowing an amendment to the caption in the Labour Tribunal.

In this application, the learned High Court Judge took the view that as at 07.02.2017, the counsel for the Appellant had withdrawn the amended caption dated 10.11.2016 and thus what was left is the defective caption in the original application dated 09.11.2016.

However, an examination of the proceedings indicates that the learned Labour Tribunal President had on 07.02.2017 accepted the amended caption filed by the Applicant and proceeded for inquiry. According to the proceedings of that date, a copy of the amended caption was handed over to the Respondent in the open Tribunal.

Upon considering the amendments made to these applications, we note that the only amendment that was sought to be made to the caption is to identify the name of the Applicant on whose behalf the Trade Union was making the application. This amendment was correctly allowed by the Labour Tribunal as a liberal approach must be taken to such amendments in the Labour Tribunal.

Moreover, we are of the view, that the objection raised by the Respondent has not caused any prejudice to the Respondent in as much on 07.02.2017, both parties admitted before the Labour Tribunal that “ඉල්ලුම්කරු දියමන්ති ඔපදමන්නෙකු වශයෙන් සේවය කල බවත්”. This is a clear admission on the part of the Respondent that it was aware as to who the Applicant is and was not in any way prejudiced by the amendment to the caption being allowed by the learned President of the Labour Tribunal and inquiry commencing.

Moreover, the inquiries in all the connected cases have proceeded and the Respondent has taken part in the inquiry without any objection. No relief against the order made by the learned Labour Tribunal President to proceed with the inquiry after accepting the amended caption was sought by the Respondent.

For the forgoing reasons, we are of the view that the alleged defect in the application has not prejudiced the substantial rights of the Respondent or occasioned a failure of justice.

Accordingly, we answer all the question of law in the affirmative.

The judgment of the learned High Court Judge of Panadura dated 21.06.2019 is hereby set aside.

We are of the view that as the learned High Court Judge of Panadura has not considered the merits of the appeal made by the Respondent, this is a fit and proper matter to be remitted to the High Court of Panadura to be considered on the merits, and judgment to be delivered according to law.

There are six (6) connected applications namely, S.C. Appeal. Nos. 69/2022, 71/2022, 72/2022, 73/2022, 74/2022 and 75/2022.

The learned High Court Judge has pronounced judgment in WP/HCALT/05/2017 (S.C. Appeal 70/20220) and the parties agreed that the judgment of the learned High Court judge will apply to the connected cases namely, WP/HCALT/04/2017, WP/HCALT/06/2017, WP/HCALT/07/2017, WP/HCALT/08/2017, WP/HCALT/09/2017 and WP/HCALT/10/2017.

Therefore, the judgment in this case will apply to S.C. Appeal. Nos. 69/2022 [H.C. Case No. 04/2017, L.T. Case No. PN/25/23/2016], 71/2022 [H.C. Case No. 06/2017, L.T. Case No. PN/25/25/2016], 72/2022 [H.C. Case No. 07/2017, L.T. Case No. PN/25/26/2016], 73/2022 [H.C. Case No. 08/2017, L.T. Case No. PN/25/27/2016], 74/2022 [H.C. Case No. 09/2017, L.T. Case No. PN/25/28/2016] and 75/2022 [H.C. Case No. 10/2017, L.T. Case No. PN/25/29/2016].

Appeal allowed. The learned Judge of the Provincial High Court of the Western Province holden in Panadura is directed to determine the merits of the applications and make order according to law. Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT