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 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

G. Kothandan,
"Bethany"
Golf Links Road,
Bandarawela

Applicant

SC Appeal 164/2011
SC Appeal 165/2011
HC/ALT/55/2008
HC/ALT/63/2008
LT/36/19462/2006

Vs,

Agarapatane Plantations Limited,
No. 53-1/1, Sir Baron Jayatilleke Mawatha,
Colombo 01

Respondent

And

Agarapatane Plantations Limited,
No. 53-1/1, Sir Baron Jayatilleke Mawatha,
Colombo 01

Respondent -Appellant

Vs,

G. Kothandan,
"Bethany"
Golf Links Road,
Bandarawela

Applicant-Respondent

And now between

Agarapatane Plantations Limited,
No. 53-1/1, Sir Baron Jayatilleke Mawatha,
Colombo 01

Respondent-Appellant-Appellant

Vs,

G. Kothandan,
"Bethany"
Golf Links Road,
Bandarawela

Applicant- Respondent -Respondent

Before: **Sisira J. de. Abrew, J**

Prasanna Jayawardena PC J

Vijith K. Malalgoda PC J

Counsel: Uditha Egalahewa with Damitha Karunarathne,

for the Respondent-Appellant-Appellant

Rohan Sahabandu PC with Ms. Hasitha Amarasinghe,

for Applicant- Respondent -Respondent

Argued on: 10.09.2018

Decided on: 18.10.2018

Vijith K. Malalgoda PC J

SC Appeal 164/2011 and SC Appeal 165/2011 are appeals filed by the Respondent in Labour Tribunal Case No. 36/19462/2006 which was pending before the Labour Tribunal of Bandarawela.

The Applicant G. Kothandan who was initially employed by the Agarapathane Plantations Company, as a Secretary (security) was working as an internal auditor at the time he was sent on retirement, reaching the age of 55 years. The Applicant, who was not happy with the said decision of the Respondent, to send him on retirement by reaching 55 years, went before the Labour Tribunal.

At the conclusion of the inquiry before the Labour Tribunal, the President of the said Labour Tribunal by his order dated 25.03.2008 directed the Respondent to pay the Applicant one year's salary as compensation.

Being dissatisfied with the said decision, both the Applicant and the Respondent had preferred appeals to the High Court of the Uva Province- holden in Badulla. By his order dated 20.05.2011 the learned High Court Judge had allowed the appeal filed by the Applicant-Appellant and directed the Respondent-Respondent to pay the Applicant-Appellant 05 years' salary as compensation.

The Respondent-Respondent in the said appeal and the Respondent-Appellant in the cross appeal namely, Agarapathane Plantations Company Limited, being dissatisfied with the said orders of the High Court of Uva Province, had preferred two Special Leave to Appeal applications before the Supreme Court.

When the said Special Leave to Appeal applications were supported before this court on 18.10.2011, parties agreed to support only one matter, i.e. SC SPL LA 125/2011 and this court after considering the matters placed before court in the said application had granted special leave on the questions of law containing in paragraph 13 (b) (c) (d) and (e) to the effect that;

b) Did the Honourable Judge of the High Court misdirected himself in the interpretation of the terms and conditions of employment more specifically the grant of extension of service?

c) Did the Honourable Judge of the High Court misdirected himself with regard to the duty of the workman to mitigate his losses?

d) Did the Honourable Judge of the High Court err in evaluating and analyzing the provisions of the letter of appointment and circulars applicable in this matter?

e) Did the Honourable Judge of the High Court fail to consider "just and equitable jurisdiction" vested in the Labour Tribunal?

Since the parties agreed to support only one matter and to abide by the decision in the said appeal, at the time the leave was granted, question of considering both appeals will not arise at this stage.

As admitted by both parties before this court the Applicant-Respondent-Respondent (hereinafter referred to as Applicant-Respondent) who commenced his career as a secretary (security) in a lower grade in the year 1992 was subsequently promoted to a post of Assistant Manager in the year 1995. Parties relied on three main documents during the arguments before us. The Respondent-Appellant-Appellant (hereinafter referred to as Respondent-Appellant) heavily relied on the document marked A-9, whilst the Applicant-Respondent heavily relied on documents marked A-3 and A-5.

Whilst referring to document A-9 which is the letter of appointment issued to the Applicant-Respondent when he was promoted as the Assistant Manager in the year 1995 the Respondent-Appellant argued that, the said letter of appointment categorically provided that the workman would be automatically retired at the age of 55.

Under clause 11 of the said letter, retirering age of the employee is referred to as follows;

11 retirements: You will stand automatically retired on reaching the age of 55.

Whilst relying on the said document, the Respondent-Appellant further submitted that the document relied by the Applicant-Respondent, namely A-3 was a document issued in January 1994, one and a half years prior to the issuance of the letter of appointment to the Applicant-Respondent and therefore A-3 could not supersede the specific conditions set out in the letter of appointment marked A-9.

As a further argument, the Respondent-Appellant had submitted that there is a pre-requisite for the workman to claim the benefit under paragraph 2 of A-3, and the Applicant-Respondent is not entitled to claim the said benefit due to his own conduct, by failing to give notice prior to six months of his retirement date. The Respondent-Appellant denied A-5 and took up the position that it has no bearing of his employees since it was issued by the State Plantation Corporation.

Even though I see no merit in the 1st argument of the Respondent-Appellant that A-3 could not supersede A-9, I would like to go into more detail about the 2nd argument referred to above.

As referred to above in this judgment, the Applicant-Respondent had relied on two documents A-3 and A-5. A-5 which referred to the outcome of a discussion between the Minister-in-Charge of the Plantation Industries and some Trade Unions in the same sector, issued by the Sri Lanka State Plantation Corporation, in October 1991.

In the said document, the extension of the employment beyond the retirering age is referred as follows;

1.1 ……explained the following policy that will be adopted in regard to extensions of service of the workers and the other staff beyond the optional age of retirement (55 years)

Estate workers- workers will be allowed extensions up to 60 years

Other members of the staff- extension beyond 55 years of age will be given if the employees work and conduct have been satisfactory and if he is in good health provided no surplus on the particular grade/s

1.2 Request for extension of service should be made six month prior to the date on which such extension fall due

Even though the learned President's Counsel who represented the Respondent-Appellant, challenged the validity of the above documents with regard to the employees of the Agarapathane Plantations Limited, it is observed by this court that the decisions referred to in the said circular with regard to the extension of service beyond 55 years had been adopted by the Agarapathane Plantations Limited by A-3 dated 06.01.1994. In the said circumstances it is

observed by this court that the provisions referred to above will have a bearing on the employees of the Agarapathane Plantations Limited up to the point it had been adopted by the Respondent-Appellant Company.

However between the above documents, namely A-3 and A-5, A-3 is the most important one which has direct bearing on the employees of the Respondent-Appellant Company.

As further observed by this court, document A-5 is more general in its nature, since it refers not only to the extension of service beyond the age of 55 but also referred to several other issues in the estate sector but A-3 is a specific document which deals only with the subject, "Extension of service of employees- beyond 55 years"

Even though the learned President's Counsel who represented the Respondent-Appellant had mainly relied on paragraph 2 of the said circular, raising the 2nd objection referred to above, it is necessary to consider paragraphs 2-5 of the said circular to understand the policy adopted by the employer by the said circular. In the said circumstances I would like to first reproduce the paragraphs 2-5 of the circular dated 06.01.1994 which reads as follows;

> "It is therefore mandatory on the employees concerned to make applications of their intention to continue in employment beyond the age of 55 years. Such application should be made six months prior to reaching 55 years and subsequent applications for such extensions should also be made annually six months before the expiry of their current extension.
>
> Irrespective of whether the employee concerned make an application of his intention to continue in employment, it would be in the interests of the management to give an employee one year's notice and also indicate clearly to him the necessity to handover vacant position of the official quarters occupied by him and any other assets belonging to the estate in his charge, on or before the date of his/her retirement. In the event, the management decides to terminate the employment of an employee after he/she reaches 55 years and it is the intention of the management to limit such extension to one year only, this should be intimated in writing to the employee together with the necessity to handover vacant position of the official quarters on or before such date of retirement.

> Similarly, in the event of any further extensions beyond one year are granted and depending on whether or not it is the intention of the management to retire such employee after each such extension written notice, as appropriate of the managements intention should be conveyed. This will facilitate the employee, to make alternative arrangements as regards his/her housing, schooling for his/her children and also plan for his/her future commitments consequent to retirement."

Even though there is a mandatory requirement for the employee concerned to make such application six months in advance, (not followed by the employee in the present case) the next paragraph of the same circular had provided, in the interest of the management, the management to give one year's notice indicating the date on which he has to hand over the official quarters etc.

As correctly observed by the learned President of the Labour Tribunal, in the absence of such notice being given, there is a legitimate expectation by the Applicant-Respondent that his services will be extended for one year when he reaches the age of 55 years, since the requirement under the above circular had not been followed by the employer giving him notice that he should vacate the official quarters etc. on completion of 55 years. In the said circumstances, I observe that the learned President of the Labour Tribunal is correct in granting compensation of one year's salary to the Applicant-Respondent.

When the above decision was challenged before the High Court of Provinces holden in Badulla the learned High Court Judge had decided to increase the compensation to 5 years' salary merely for the reason that the appeal has taken more than 4 years and the Applicant-Respondent has now reached 60 years, and therefore he will not be able to find alternate employment.

As observed by me the document A-3 or A-5 had not provided an extension of the employment of an employee who reached the age of 55 years by 05 years. The extension if it to be granted, will only be for one year and to be considered once again by adhering to all the requirement in the circular for one more year. In the said circumstances question of granting compensation computed for 5 years will not arise and therefore I hold that the learned High Court Judge had erred when he decided to award compensation for a period of 5 years based on his last drawn salary.

I therefore answer the questions of law raised before this court in favour of the Respondent-Appellant and set aside the order of the learned High Court Judge of the Uva Province dated 20.05.2011 and affirm the order dated 25th March 2008 by the learned President of the Labour Tribunal Bandarawela.

Appeal allowed no costs.

Judge of the Supreme Court

Sisira J. de. Abrew J

I agree,

Judge of the Supreme Court

Prasanna Jayawardena PC J

I agree,

Judge of the Supreme Court