

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

In the matter of an Application for Special Leave to Appeal under and in terms of Article 154P(3)(b) of the Constitution and in terms of Section 31DD(2) of the Industrial Disputes Act No. 43 of 1950 (as amended) read with Section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and Section 8 of the Industrial Disputes (Hearing and Determination of Proceedings) (Special Provisions) Act No. 13 of 2003 from the Order of the Provincial High Court of the Western Province holden in Panadura.

S.C. Appeal No. 134/2023
S.C. (S.P.L.) (L.A.) No. 296/2021
H.C. Case No. HC/ALT/09/2021
L.T. Colombo Case No.
LT PN25/108/2018

Epa Arachchige Kumudu Upendra
Premachandra,
No. 26/2, Janajaya Mawatha,
Atambagoda,
Panadura.

Applicant

Vs.

Asiabike Industrial Limited,
No. 114, Old Galle Road,
Henamulla,
Panadura.

Respondent

AND BETWEEN

Epa Arachchige Kumudu Upendra
Premachandra,
No. 26/2, Janajaya Mawatha,
Atambagoda,
Panadura.

Applicant – Appellant

Vs.

Asiabike Industrial Limited,
No. 114, Old Galle Road,
Henamulla,
Panadura.

Respondent – Respondent

AND NOW BETWEEN

Asiabike Industrial Limited,
No. 114, Old Galle Road,
Henamulla,
Panadura.

Respondent – Respondent – Petitioner

Vs.

Epa Arachchige Kumudu Upendra
Premachandra,
No. 26/2, Janajaya Mawatha,
Atambagoda,
Panadura.

Applicant – Appellant – Respondent

Before: Hon. Murdu N. B. Fernando, P.C., C.J.

Hon. Janak De Silva, J.

Hon. Achala Wengappuli, J.

Counsels: Mohamed Adamaly, P.C. with Dakshina Wickramarachchi and
Shannel Gunatileka for the Respondent – Respondent – Petitioner

Srinath Perera for the Applicant – Appellant – Respondent

Written Submissions: 27.02.2024 by the Respondent – Respondent –
Petitioner

Argued on: 28.02.2024

Decided on: 22.05.2025

Janak De Silva, J.

The Applicant-Appellant-Respondent (Respondent) was an employee of the Respondent-Respondent-Appellant (Appellant).

In November, 2018 the Respondent made an application to the Labour Tribunal of Panadura alleging that the Appellant had unjustly and unlawfully terminated his services. After inquiry, the Labour Tribunal held that the Appellant had acted mala fide in terminating the services of the Respondent. The termination was held to be unjust and unlawful.

However the Labour tribunal did not order reinstatement as it could be an impediment to industrial peace. Instead, compensation was awarded in a sum of Rs. 318,000/= which amounted to 06 months basic salary.

The Respondent appealed to the High Court of the Western Province holden in Panadura ("High Court"). At the hearing of the appeal, the Appellant raised a preliminary objection that the appeal was out of time. The learned High Court Judge overruled the preliminary objection.

The Appellant sought leave to appeal against the said order. Leave to appeal has been granted on the following question of law:

"Did the Learned High Court Judge err in law in computation of the time applicable for filing of appeals from the awards made by the Labour Tribunal to the High Court?"

At the outset, it must be elucidated that we are not dealing with a law that was enacted in English prior to the 1972 Constitution. In such cases, the Court will be guided by the language in which the law was enacted.

In ***Attorney-General v. Herath Mudiyanseelage Hamyge Herath Banda* [(1983) Bar Association Law Journal Reports Vol. I Part III 108]** it was held that the Bribery Act was enacted in English and for the purposes of legal work it could not be considered in any other language. [See ***Chandrawathi v. Wijewickrama* (S.C. Appeal 177/2016, S.C.M. 28.07.2022 at page 5)**].

The Industrial Disputes (Hearing and Determination of Proceedings) (Special Provisions) Act No. 13 of 2003 ("Act") was enacted under the 1978 Constitution. Section 6(1) of specifies the time limit within which a petition of appeal must be filed. The English text of the Act reads as follows:

*"A petition of appeal made under section 31D of the Industrial Disputes Act against an order made by a labour tribunal, shall be filed within a period of thirty days (including the day on which the order appealed from was made, but **excluding***

Sundays and Public Holidays) of the date of the making of the order from which the appeal is preferred.” (emphasis added)

However, the Sinhala text of Section 6(1) of the Act reads as follows:

“කම්කරු විනිශ්චය අධිකාරියක් විසින් කරනු ලබන ආඥාවකට එරෙහිව කාර්මික ආරවුල් පනතේ 31෦ වගන්තිය යටතේ ඉදිරිපත් කරනු ලබන අභියාචන පෙත්සමක් (අභියාචනය කරනු ලැබුවේ යම් ආඥාවකට එරෙහිව ද ඒ ආඥාව කරනු ලැබූ දිනයද ඇතුළුව එහෙත් ඉරිදා දින සහ පෝය දිනයන් හැර) ආඥාව කරනු ලැබූ දින සිට දින තිහක කාලයක් ඇතුළත ගොනුකරනු ලැබිය යුතුය.” (emphasis added)

There is a clear discrepancy between the Sinhala and English texts. According to the English text, *Sundays and Public Holidays* must be excluded in the computation whereas the Sinhala text requires the exclusion of *Sundays and Poya Days*.

The order of the Labour Tribunal was pronounced on 15.12.2020. The petition of appeal in this case was filed in the High Court on 20.01.2021 at 4.00 p.m.

If time is computed based upon the Sinhala text of the Act, the petition of appeal was filed on the 31st day calculated by including the day on which the order was pronounced but excluding *Sundays and Poya days*. Then the petition of appeal is out of time by one day.

However, during this period there were two public holidays, namely 25 December 2020 (Christmas) and 14th January 2021 (Thai Pongal). Should the English text of the Act prevail, the petition of appeal is within time.

The learned High Court judge relied on the English text and concluded that the Sinhala text refers to *Poya Days* rather than *Public Holidays* due to an error which ought to be corrected to read as *Public Holidays*. He therefore held that the holidays for Christmas and Thai Pongal should be excluded in computing the time.

The Tamil text of Section 6(1) of the Act reads as follows:

“கைத்தொழில் பிணக்குச்சட்டம் பிரிவு 31னு இற்கு அமைய ஓர் தொழில் நியாய சபையின் ஆணைக்கு எதிராக பதியப்படும் ஓர் மேன்முறையீட்டு மனுவானது ஆணை இடப்பட்ட திகதியிலிருந்து முப்பது நாள் காலவரையினுள் (ஆணை இடப்பட்ட தினத்திலிருந்து ஞாயிறு மற்றும் பொது விடுமுறை தினங்கள் உள்ளடங்காது) பதிவு செய்யப்படல் வேண்டும்.”

Therefore, the Tamil and English texts of Section 6(1) of the Act are consistent in requiring Sundays and *Public Holidays* to be excluded in the computation of time.

However, Section 18 of the Sinhala text of the Act provides that in the event of any inconsistency or discrepancy between the Sinhala and Tamil texts, the Sinhala text shall prevail. The foundation of this legislative direction is Article 23(1) of the Constitution which reads as follows:

“23(1) All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English;

Provided that Parliament shall, at the stage of enactment of any law determine which text shall prevail in the event of any inconsistency between texts;

Provided further that in respect of all other written laws the text in which such written laws were enacted or adopted or made, shall prevail in the event of any inconsistency between such texts.”

The following points can be made:

1. All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil.
2. Such enactment or making and publication must be with a translation thereof in English.

3. However, Parliament can, at the stage of enactment or making of any law, determine whether the Sinhala or Tamil text shall prevail in the event of any inconsistency between those texts.

It is important to observe that Article 23(1) as originally enacted in 1978 read as follows:

“All laws and subordinate legislation shall be enacted or made, and published, in both National Languages together with a translation in the English Language. In the event of any inconsistency between any two texts, the text in the Official Language shall prevail.”

Article 18 specified the Official Language to be Sinhala. Article 19 specified the National Languages to be Sinhala and Tamil. Hence original the intention of the legislature under the 1978 Constitution was that all laws shall be enacted and published both in Sinhala and Tamil together with a translation in the English Language. In the event of any inconsistency between the Sinhala and Tamil or Sinhala and English texts, the text in Sinhala was to prevail.

The Thirteenth Amendment to the Constitution amended Article 18 by making Tamil also an Official Language and English, the link language. No amendment was made to Article 23(1). Hence after the 13th Amendment to the Constitution, the legislature was required to enact or make legislation in both official Languages, namely Sinhala and Tamil languages. There was no specific provision in the Constitution to deal with situations where there was any inconsistency between the Sinhala and Tamil texts as both were now Official Languages.

However, the 16th Amendment to the Constitution, which came into effect on 17.12.1988, amended Article 23(1) and brought in the present formulation which allows the legislature to determine, at the stage of enactment of any law, which text shall prevail in the event of any inconsistency between texts.

The legislative history provides a clear indication of the intention of the legislature to vest on itself the power to determine which text shall prevail in the event of any inconsistency. There is no opportunity for any court to embark upon a voyage of interpretative discovery given the clear and unambiguous words used by the legislature to set forth its intention acting in terms of the powers vested in it by Article 23(1).

Unfortunately the learned High Court judge did exactly that and thereby sought to clothe himself with legislative power in an attempt to correct what he perceived to be a mistake in the Sinhala text. Should there be any mistake in the Sinhala text, it is up to Parliament to remedy it. That legislative function cannot be usurped by any court of law under the charade of legislative interpretation.

The learned High Court judge inter alia held:

- (a) Article 9 of the Constitution enshrines that while Buddhism is to be given the foremost place, the State has to assure to all other religions, the rights guaranteed by the Constitution;
- (b) However, if Public and Bank Holidays declared under the Holidays Act No. 29 of 1971 (“Holidays Act”) such as Christmas and Thai Pongal are not included as dates to be excluded when computing time for purposes of Section 6(1) of the Act, it would tantamount to a breach of the duty cast on the State to protect the rights guaranteed to all other religions under Article 9 of the Constitution;
- (c) On the other hand, even in terms of computing days under Section 754(4) of the Civil Procedure Code and Section 321(1) of the Criminal Procedure Code, the legislature has decided that “Sundays” as well as “Public holidays (Government holidays)” are to be excluded.

However, Section 18 of the Holidays Act defines “Full Moon Poya Day” to mean any day which is declared to be a Full Moon Poya Day by Order for the time being in force made by the Minister under the Holidays Act and “Public Holiday” to mean any day which is a public holiday by virtue of the operation of the provisions of the Holidays Act.

The First Schedule of the Holidays Act titled “Public Holidays” inter alia lists both “Christmas” and “Thai Pongal” as “Public Holidays”. According to Section 2 therein, every Full Moon Poya Day shall be a public holiday. Clearly the Holidays Act provides for two different procedures to be followed in specifying “Public Holidays” and “Poya Days”. The learned High Court judge erred in proceeding on the basis that “Christmas” and “Thai Pongal” should be equated to Poya Day in determining the days to be excluded in the computation of time.

Furthermore, the learned High Court judge erred in proceeding on the basis that in practice a Bill is drafted in English and then translated to Sinhala and Tamil. Whatever may be the practice of drafting legislation, a Court cannot ignore the direction the legislature has made on itself in Article 23(1) that all laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English.

I must add in closing that previously Court has on several occasions given primacy to the Sinhala text when there was an inconsistency between the Sinhala and English texts [***See In the matter of a Reference under Article 154H(4) of the Constitution for a Determination relating to the Transport Board Statute – (Take Over of Assets & Liabilities of Northern & Eastern Province Transport Board)*** (S.C. No. 7/89 (Special), S.C.M. 22.02.1990); ***Don Tilakaratne v. Indra Priyadarshanie Mandawala*** [(2011) 2 Sri LR 280 at 290]; ***Tropical Island Commodities (Private) Limited v. Mediterranean Shipping Company*** (S.C. Appeal 137/2015, S.C.M. 03.12.2018 at 4-5); ***Subeya Hakuru Susilrathne v. Commission to Investigate Allegations of Bribery or Corruption and Others*** (S.C. Appeal 10/2024, S.C.M. 03.05.2024 at 8)].

In summary, the Sinhala text of Section 6(1) of the Act prevails in the event of any inconsistency with either the Tamil or English text. Therefore, only *Sundays* and *Poya Days* should be excluded in the computation of time. The learned High Court judge erred in excluding Christmas and Thai Pongal. The petition of appeal of the Respondent filed in the High Court is out of time.

For all the foregoing reasons, I answer the question of law in the affirmative and allow the appeal. The order of the learned High Court judge dated 22.11.2021 is set aside.

The petition of appeal of the Respondent filed in the High Court is dismissed as it has been filed out of time. The order of the Labour Tribunal of Panadura dated 15.12.2020 stands.

Appeal allowed. Parties shall bear their costs.

In conclusion, I must place on record my concern on a recurring problem which has, in this case, led to this appeal. There have been several instances previously where we have had reason to comment on the discrepancy between the Sinhala and English texts of Bills in the process of enactment or making of legislation [See **Anti-Corruption Bill Determination (S.C.S.D. 16-21/2023 at 78-79); Ayurveda (Amendment) Bill Special Determination (S.C.S.D. Nos. 22-24, 34-35, 52, 55, 57/2023 at 55)**]. I am once again drawing the attention of the legislature to this recurring problem with the hope that effective remedial steps will be taken to address it early.

JUDGE OF THE SUPREME COURT

Murdu N. B. Fernando, P.C., J.

I agree.

CHIEF JUSTICE

Achala Wengappuli, J.

JUDGE OF THE SUPREME COURT