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

SC Appeal No. 44/2011
SC (HC) LA No.233/2010
HC/AMP/LT/APP/285/08
LT No. 227/96

Applicant

E.P.A. Premasundara
No. 20/65, Kumarigama
Uhana

Vs

Seemasahitha Galoya
Medapalatha Vivida Seva
Samupakara Samithiya
Uhana

Respondent

And Between

E.P.A. Premasundara
No. 20/65, Kumarigama
Uhana

Applicant – Appellant

Vs

Seemasahitha Galoya
Medapalatha Vivida Seva
Samupakara Samithiya
Uhana

Respondent-Respondent

And Now Between

E.P.A. Premasundara
No. 20/65, Kumarigama
Uhana

Applicant – Appellant – Petitioner

Vs

Seemasahitha Galoya
Medapalatha Vivida Seva
Samupakara Samithiya
Uhana

Respondent-Respondent-Respondent

Before: Amaratunga J.
Sripavan J.
Suresh Chandra J.

Counsel:
Sanath Sinhage for the Applicant – Appellant - Petitioner
G. Wijemanne for the Respondent – Respondent - Respondent

Argued on : 23.08.2011
Decided on : 28.02.2012

Suresh Chandra J,
This is an appeal against the judgment of the High Court of Ampara consequent upon an appeal filed against the order of the Labour Tribunal by the Appellant. The Appellant had made an application to the Labour Tribunal of Ampara which was sitting as a circuit Tribunal of Badulla. In his application the Appellant had stated that he had been employed by the Respondent and that his services had been arbitrarily terminated and he prayed that he be reinstated with backwages. The Respondent filed answer in which an objection was taken up regarding the maintainability of the application on the basis that the Appellant had made an application to the Co-operative Employers Commission of the Eastern Province. Having considered the written submissions filed by both parties regarding the preliminary objection the Labour Tribunal upheld the objection and dismissed the application.
The Appellant filed an application for Revision in the High Court of Ampara to have the said Order of the Labour Tribunal revised. The High Court set aside the order of the Labour Tribunal and directed the Tribunal to inquire into the application. The application was inquired into by the Labour Tribunal sitting in Ampara by the President of the Badulla Labour Tribunal and since the inquiry had been concluded the order had been reserved for 28th June 2001. However the President of the Labour Tribunal who succeeded the President who inquired into the application had ordered a fresh trial as the evidence led before the Tribunal had been inadequate. The Ministry of Justice by a circular dated 28.10.2003 established new Labour Tribunals and a Labour Tribunal was set up at Ampara with effect from 01.01.2004. The Appellant's application was inquired into by this Tribunal by the President of the Labour Tribunal of Badulla and evidence was concluded and the order was to be made on 22.08.2007. The President of the Labour Tribunal of Ampara sought a direction from the Judicial Service Commission regarding the pronouncement of the Order in the case. The Judicial Service Commission had directed the President of the Labour Tribunal of Badulla to write the order as he had heard the case of the Appellant sitting at the Ampara Labour Tribunal. Consequently the President of the Labour Tribunal of Badulla had sent the order to the Labour Tribunal of Ampara and the President of the Labour Tribunal of Ampara pronounced the order which was a dismissal of the application of the Appellant. The Appellant filed an appeal against the said order in the High Court of Ampara. On an

objection taken up regarding jurisdiction the High Court of Ampara dismissed the appeal on the basis that it had no jurisdiction to hear the appeal.

The Appellant filed an application for Leave to Appeal to this Court and Leave was granted on 27.04.2011 on the following questions of law set out in Paragraph 21 (a) (b) and (c) on the Petition dated 17.12.2010:

(a) Whether the said Order of the High Court of the Eastern Province sitting at Ampara is contrary to Law?

(b) Whether the Learned Judge of the High Court of the Eastern Province sitting at Ampara misdirected himself in coming to the conclusion that his Lordship was bound by the judgment of the Supreme Court in the case of Coconut Research Board v Fernando by failing to distinguish the circumstances of the issues pertaining to this matter before him from the circumstances of the former?

(c) Whether Learned Judge of the High Court misdirected himself by failing to take into account that the revisionary jurisdiction of the same court was invoked on an earlier occasion by way of Case No. HC/AMP/ 48/96 for the determination of an entirely different issue?

A perusal of the record shows that the Caption of the application of the Appellant has been stated as “In the Labour Tribunal of Badulla – Ampara” and had been filed on 28th February 1996. At that time the Ampara Tribunal was a circuit Tribunal of the Labour Tribunal of Badulla. The order regarding the preliminary objection on the maintainability of the application before the Labour Tribunal had been made on 28th November 1996. This order was challenged in the High Court of Ampara by way of a revision application and the order regarding the same was made on 29.07.1997. The proceedings had been conducted throughout at the Labour Tribunal of Ampara and the evidence had been concluded by the President of the Labour Tribunal Badulla when Ampara was still a circuit tribunal. From 1st January 2004 The Labour Tribunal in Ampara ceased to be a circuit tribunal and was made a permanent tribunal. The Order which was given on the directions of the Judicial Services Commission was given by the President of the Labour Tribunal of Badulla who had in fact heard the entirety of the case. This order on being sent to the Labour Tribunal of Ampara was pronounced by the President presiding in that Tribunal. These facts clearly show that this case was entirely before the Labour Tribunal of Ampara although the order was made by the President of the Labour Tribunal of Badulla.

It is significant to note as shown above that when the preliminary objection was taken regarding the maintainability of the application, the High Court of Ampara had exercised its jurisdiction in making an order regarding the same. However when considering the appeal against the final order of the Labour Tribunal the Court had held that it had no jurisdiction which contradicts the position taken by the High Court Judge earlier. In justifying its order the High Court had relied on the judgment in the Coconut Research Board v Fernando 1993 (1) S.L.R. 219.

In that case, the Applicant had filed an application in the Labour Tribunal without describing the Territorial Area of the Tribunal. However, the Replication filed by the Applicant referred to the Tribunal as Labour Tribunal No.21 Negombo circuit Chilaw. Proceedings had been held by the President of the Labour Triubnal of Negombo sitting at Chilaw. The final order of the Tribunal was captioned as “Labour Tribunal No.21 – Negombo” without reference to the circuit Chilaw. The Employer appealed against the

said order to the High Court of the Western Province and an objection was taken up by the Applicant that the High Court of Western Province had no jurisdiction and that the appeal should have been filed in the High Court of North Western Province. It was held that as the order was made by the Labour Tribunal of Negombo the High Court of the Western Province had jurisdiction to hear the appeal.

The facts relating to the present case are quite different in that the initial application had been made at Ampara, the sittings were held and concluded in Ampara and the order though written by the President of the Labour Tribunal of Badulla had been delivered in Ampara. Further, by the time that the case came to be concluded a permanent Labour Tribunal had been established at Ampara. Therefore the present case can be described as a case that has been initiated, heard and decided upon as a case in the Labour Tribunal of Ampara.

S.31C(3) of the Industrial Disputes Act No.43 of 1950 states that

"Where the workman who, or the trade union which, makes an application to a Labour Tribunal, or the employer to whom that application relates is dissatisfied with the order of the tribunal on that application, such workman, trade union or employer may, by written petition in which the other party is mentioned as the respondent, appeal from that order on a question of law, to the High Court established under Article 154P of the Constitution, for the Province within which such Labour Tribunal is situated."

S.4 of the High Court of Provinces (Special Provisions) act No.19 of 1990 states that

"A party aggrieved by any conviction, sentence or order, entered or imposed, by a Magistrate's Court, a Primary Court, a Labour Tribunal or by an order made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979 may, subject to the provisions of any written law applicable to the procedure and manner for appealing and the time for preferring such appeals, appeal there from to the High Court established by Article 154P of the Constitution for the Province within which such court or tribunal is situated or within which the land which is the subject of the order made under the Agrarian Services Act, is situated."

An examination of the above S.31C(3) of the Industrial Disputes Act No.43 of 1950 as amended and S.4 of the High Court of Provinces (Special Provisions) act No.19 of 1990 would clearly show that it is the High Court of the Province where the Labour Tribunal is situated that would have jurisdiction to hear an appeal from a tribunal situated within the province.

The factual situation discussed above in relation to the present appeal and the sections quoted above clearly show that the Provincial High Court of Ampara had jurisdiction to hear the appeal preferred to it from the Labour Tribunal of Ampara.

Consequently the High Court of Ampara had erred in holding that the said High Court did not have jurisdiction to hear the said appeal.

In the above circumstances, the questions of law on which leave was granted are answered as follows:

(a) That the orders of the High court of the Eastern province sitting at Ampara is contrary to law.

(b) That the learned High Court Judge of the High court of the Eastern province sitting at Ampara misdirected himself in coming to the conclusion that the decision in Coconut Research Board vs Fernando was binding as the circumstances in the case are distinguishable as shown above.

(c) That the learned Judge of the High court had misdirected himself in failing to consider that the same Court had exercised jurisdiction over a matter arising out of an order made by the Tribunal in the same case though on a different issue.

The judgment of the High court of Ampara is set aside and the present appeal of the Appellant is allowed. The High Court of Ampara is directed to hear and determine the appeal filed by the Appellant expeditiously. The Appeal is allowed with costs fixed at Rs.31,500/-.

JUDGE OF THE SUPREME COURT

AMARATUNGA J.

I agree.

JUDGE OF THE SUPREME COURT

SRIPAVAN J.

I agree.

JUDGE OF THE SUPREME COURT