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

In the matter of an Appeal in terms of Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006

SC/APPEAL/125/2023

SC/SPL/LA/106/2022

HC Matale/ LTA 22/2019

LTA 39/28/2017

Hettihewage Lionel Silva Hettihewa
No. 91/1, Polgollawatte,
Polgolla.

APPLICANT

Vs.

Seylan Bank PLC
90, Seylan Towers,
Galle Road,
Colombo 03.

RESPONDENT

AND BETWEEN

Hettihewage Lionel Silva Hettihewa
No. 91/1, Polgollawatte,
Polgolla.

APPLICANT- APPELLANT

Vs.

Seylan Bank PLC
90, Seylan Towers,
Galle Road,
Colombo 03.

RESPONDENT-RESPONDENT

AND NOW BETWEEN

Seylan Bank PLC
90, Seylan Towers,
Galle Road,
Colombo 03.

RESPONDENT-RESPONDENT- APPELLANT

Vs.

Hettihewage Lionel Silva Hettihewa
No. 91/1, Polgollawatte,
Polgolla.

APPLICANT-APPELLANT-RESPONDENT

Before: Janak De Silva J.

Mahinda Samayawardhena J.

Dr. Sobhitha Rajakaruna J.

Counsel: Aruna Samarajeewa for Respondent-Respondent-Appellant in SC. Appeal Nos. 24/2024, 25/2024, 26/2024, 27/2024 and 125/2023.

Dr. Sunil Cooray for Applicant-Appellant-Respondent in SC. Appeal No. 125/2023.

Sagara T. Jayawickrama for Applicant-Appellant-Respondent in SC. Appeal Nos.24/2024, 25/2024, 26/2024, 27/2024 and SC. HC. LA. Nos. 69/2023 and 70/2023.

Written Submissions: Applicant-Appellant-Respondent - 28.08.2025

Respondent-Respondent-Appellant - 18.10.2023

Argued on: 14.07.2025

Decided on: 17.12.2025

Dr. Sobhitha Rajakaruna J.

All parties brought to the attention of this Court that the cases bearing Nos. SC/APPEAL Nos. 24/2024 with 25/2024, 26/2024, 27/2024, 125/2023 & SC.HC.LA.Nos. 69/2023 and 70/2023, SC.SPL.LA.Nos. 250/2021, 266/2021, 85/2022 and 86/2022 arise from a contract of employment entered into between the Applicant-Appellant-Respondent

('Applicant') and Respondent-Respondent-Appellant ('Appellant'). Likewise, all parties concede that the age of retirement of the employees of the Seylan Bank ('Appellant') at that time was 55 years, which could be extended to 57 years, subject to the relevant Circular issued by the Appellant.

The learned Counsel who appeared for both parties further submitted that Special Leave to Appeal has already been granted in SC/APPEAL Nos. 24/2024, 25/2024, 26/2024, 27/2024 and 125/2023; however, Leave to Appeal has not been granted in SC.HC.LA. Nos. 69/2023 and 70/2023 SC (SPL) LA. Nos. 250/2021, 266/2021, 85/2022 and 86/2022. Accordingly, with the agreement of all parties, the Court allowed the Petitioners in each of the aforesaid cases to support their application for Leave to Appeal. Having heard the learned Counsel for such Petitioners, this Court granted Leave to Appeal.

The Questions of Law formulated in respect of all the cases are as follows:

> 1) Has the learned High Court Judge erred in holding that the application for extension of employment of the Applicant was not duly evaluated by the Bank?
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> 2) Has the learned High Court Judge erred in Law by failing to consider and appreciate the principles laid down in the Judgment in ***Sri Lanka Insurance Corporation Ltd Vs. D.G. Jayathilake*** [2008] 1 Sri LR 411?

This Court notified the parties that the 2nd Question of Law, as formulated by the respective Petitioners in their Petitions, has been accepted, though this does not signify the Court's endorsement of the referenced judgment during the leave stage of these proceedings. Parties concurred that all these matters could be consolidated and taken up for Argument jointly, enabling this Court to pronounce one judgment while drawing attention to the factual circumstances of each application. Similarly, the parties affirmed that all required documents for these Appeals are found in the brief for SC/APPEAL No. 125/2023 (instant Application), and their submissions will rely on those materials.

The Applicant, after filing the Application in the Labour Tribunal of Matale ('Labour Tribunal'), commenced the case since the termination of the services of Applicant was

denied by the Appellant. The Labour Tribunal, delivering its order on 26.11.2019, dismissed the application of the Applicant. However, the Provincial High Court of the Central Province holden in Matale ('High Court'), upon an appeal, set aside the order of the Labour Tribunal on 23.02.2022. This Court granted Special Leave to Appeal against the Judgement of the said High Court.

The Appellant contends that the age of retirement was fixed at 55 years in the year 2009, long prior to the Applicant's scheduled retirement, and thus, the Applicant had no legitimate expectation for any extension beyond that threshold. The Appellant asserts that the High Court has erred in law by concluding that the Applicant was entitled to 2 years of compensation, when the extension of employment from 55 years onwards, and it is at the sole discretion of the Appellant, as conceded by the Applicant himself. The Appellant has the discretion which it may exercise fairly by declining to extend the Applicant's tenure beyond 55 years. Similarly, the Appellant contends that the High Court erred in law by overlooking the guiding principles laid down in ***Sri Lanka Insurance Corporation Ltd. v D. G. Jayathilake*** [2008] 1 Sri LR 411.

The Appellant claims that owing to the economic hardships encountered in the year 2009 and the difficulties encountered by Seylan Bank PLC, the retirement age was reduced from 58 to 55 years, pursuant to the Circular bearing No. SCL 2009/003 issued on 19.03.2009 (marked as 'R6'). The Circular bearing No. SCL 2008/043 dated 19.09.2008 ('R5'), which had prolonged the retirement age to 58 years, was rescinded by the aforesaid Circular marked 'R6'. As outlined in 'R6', the Board of Directors of the Appellant resolved to comply with the Public Administration Circulars and set the retirement age at 55 years. Further, the said Board of Directors determined that in the event any staff member sought an extension, the Management will evaluate his/ her performance and grant extensions annually until he/she reaches the age of 57 years at the Management's sole discretion.

On 31.08.2016, the Appellant notified the Applicant through a letter marked 'R8' that his retirement would commence on 21.03.2017 upon turning 55 years old. The said letter 'R8' refers to Clause 13 in the letter of appointment marked 'R1', which stipulates a retirement age of 55 years. The request ('R9') made by the Applicant seeking an extension of his retirement age was turned down by the Appellant in its letter dated 07.02.2017 ('R11').

It is observed that the Circular marked 'R6' was not duly challenged by the Applicant or any staff member of the Appellant Bank, even though they voiced their dissatisfaction. While it is true that the staff members did not reach a mutual agreement on the said Circular, it is noted that the Circular remained operative from 19.03.2009 right up to the Applicant's retirement on 21.03.2017. There is no indication in evidence about any understanding between the Appellant and its employees stipulating that such Circular would be nullified if a consensus between the employer and employees could not be achieved. Furthermore, the Applicant lodged no complaint even with the Labour Commissioner upon the issuance of Circular 'R6'.

Hence, it is evident that the said Circular 'R6' has been in full force for 8 years, since the year 2009 until the Applicant sought relief from the Labour Tribunal in relation to the said Circular. It is observed that the Applicant had full knowledge of the consequences, if any, arising from the said Circular 'R6'. The Applicant was fully apprised of the said Circular prior to turning the age of 55, and the Appellant had alerted the Applicant to his retirement through the letter marked 'R8'. Consequently, it can be assumed that the Applicant, possessing the full knowledge of his right to object, intentionally abandoned it, thereby invoking the doctrine of 'waiver'. 'The general proposition of law is that a person can waive his right and that once he does so, he cannot claim it later. However, waiver arises only when the person concerned knows about his right and then waives the same.' (Vide -**M.P. Jain and S.N. Jain, *"Principles of Administrative Law"* [2022] Volume 2, 9th Ed. at p. 2543**). Jain and Jain further state:

> *'Waiver involves voluntary or intentional abandonment of a known existing legal right. Waiver is a question of fact. Waiver may be express or may be implied by conduct. The basic condition, however, is that it must be an intentional act with knowledge.'*

I am of the view that it is unfair by the Appellant that the Applicant waited until his extension was rejected to raise concerns about the said 'R6' in the Labour Tribunal, at which point he complained that the Appellant had failed to perform an appropriate evaluation process before denying his request for extension. I must now refer to the specific clauses of the said Circular 'R6'. Clauses (a) to (c) of the 'R6' are as follows:

"

a. *Implement the Public Administration Circular and set the retirement age at 55 years.*
b. *If any staff member applies for an extension, the Management to evaluate his/her performance and grant extensions annually until he/she reaches the age of 57 years at the discretion of the Management.*
c. *Only in an event where the Management decides that the services of a highly skilled employee who could not be easily replaced and who will contribute to the bottom line directly, such an employee could be exceptionally granted an extension annually until he/she reaches the age of 60 years. However, this practice is not to be encouraged.* "

Upon careful examination of the phrasing of the above Clause (b) and (c), I take the view that the norm is for any staff member to retire at the age of 55, whilst the exception is to grant an extension annually, which is at the discretion of the Appellant. The literal meaning of the said Clause reflects that the Management of the Appellant is required to evaluate the performance of the staff member in response to their application, only if the Appellant chooses to continue their employment, and only in that scenario, the Appellant holds the responsibility for disclosing the assessment process. The potential rationale for this framework, which is unique only to the said Circular, could be to avert bias or unfair treatment toward fellow employees whose tenure is not extended beyond 55 years. This proposition is clearly reflected in the preceding Clause (c), which explicitly discourages fostering the practice described within it.

Moreover, I am mindful that the strength of an assessment required at the time of discontinuing the services of an employee who is on probation is higher. In other words, the employer ought to conduct a proper assessment according to suitable criteria or prepare a report on every officer appointed on probation (See: ***Lanka Canneries v. Commissioner of Labour and Others*** CA/WRIT/385/2021, decided on 31.08.2022). Anyhow, based on the special circumstances of this Case, adopting whatever reasonable procedure which is not arbitrary in view of evaluating the performance of a staff member as required in Clause (b) of 'R6' would be sufficient. The Appellant's witness in the Labour Tribunal, during cross-examination (from Page 188 onwards of the brief), unequivocally testified that the Appellant conducts annual assessments for its staff, and the particular

decision not to extend the services of the Applicant stemmed directly from the annual review performed on the Applicant.

At this juncture, I focus my attention on the ensuing scholarly observation of Shiranee Tilakawardane J. in the Supreme Court judgement concerning the said ***Sri Lanka Insurance Corporation Ltd.*** (at p.415) case:

> *"In the area of employment and Labour law, the law must serve two, often competing purposes and must do so by achieving a precarious balance between the two. On one hand, the courts are duty-bound to protect the rights of the workman from corporate bullying and an abuse of corporate power, as the workman is clearly the lesser-empowered of the two parties. Indeed the very creation of Labour law itself is a result of the need to place checks and balances on capricious abuse of the more dominant power of the employer's action. However, in seeking to achieve such protection, the courts must take care to avoid eroding upon the right of employers and, indeed, corporations in general, to freely negotiate the relationship they choose to hold with their employees and the autonomy they are afforded as private entities under the laws governing corporate existence."*

Given the preceding considerations, I am not convinced by the stand taken by the Applicant that his request for extension of services was not duly evaluated by the Appellant. Therefore, there are no grounds to regard that the findings of the learned President of the Labour Tribunal as erroneous. Thus, I hold that the first Question of Law should be answered in the affirmative since the High Court erred in law by arriving at an erroneous conclusion.

Now I must explore whether the High Court has failed to apply the dicta of the said ***Sri Lanka Insurance Corporation Ltd.*** case in the Appeal of the Appellant in the High Court. The Supreme Court decided in the said case that the court must evaluate three key matters based on evidence from both parties if an employer's refusal to extend employment constitutes constructive termination under the Industrial Disputes Act. The employee must prove at least two of these key matters by a preponderance of evidence for the court to find the refusal unreasonable and apply the doctrine. Those three elements are i) no misconduct ii) lack of evaluation policy and iii) failure to evaluate.

Based on the foregoing considerations, I am satisfied that the Appellant has reasonably evaluated the performance of the Applicant before exercising its discretion to refuse the request of the Applicant for extension of services. Accordingly, I proceed to answer the above second Question of Law in the affirmative.

In the overall circumstances, I hold that the Applicant has failed to discharge his burden of proof in establishing that the Appellant unjustly and unreasonably terminated his employment. Accordingly, I proceed to set aside the Judgement dated 23.02.2022 of the High Court and affirm the Order dated 26.11.2019 of the Labour Tribunal. I order no cost.

This Judgement is also binding on all the parties in cases bearing SC/APPEAL Nos. 24/2024, 25/2024, 26/2024, 27/2024, 116/2025 (SC.HC.LA.No. 69/2023), 117/2025 (SC.HC.LA.No. 70/2023), 120/2025 (SC.SPL.LA.No. 250/2021), 121/2025 (SC.SPL. LA.No. 266/2021), 118/2025 (SC.SPL.LA.No 85/2022), 119/2025 (SC.SPL.LA.No 86/2022).

Judge of the Supreme Court

Janak De Silva J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena J.

I agree.

Judge of the Supreme Court