

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

In the matter of an application for Leave
to Appeal to the Supreme Court from an
order of the Provincial High Court under
and in terms of Section 31DD of the
Industrial Dispute Act (as amended).

SC/Appeal No. 138/2022

SC/HC/LA No. 87/2020

HC/ALT No. 52/2020

LT Case No. 21/337/2015

Jathika Sewaka Sangamaya,

(On behalf of Kaluappu Kankanamge Don

Luke Jagath Kamalpem),

No. 416, Kotte Road,

Pitakotte.

APPLICANT (DECEASED)

After Substitution

Kuranage Milred Sandya Hasanthi Perera

Jathika Sewaka Sangamaya,

No. 416, Kotte Road,

Pitakotte.

SUBSTITUTED APPLICANT

vs

Sri Lanka Catering Limited,

Airport,

Katunayake.

RESPONDENT

AND BETWEEN

Sri Lanka Catering Limited,
Airport,
Katunayake.

RESPONDENT-APPELLANT

vs

Kuranage Milred Sandya Hasanthi Perera
Jathika Sewaka Sangamaya,
No. 416, Kotte Road,
Pitakotte.

**SUBSTITUTED APPLICANT-
RESPONDENT**

AND NOW BETWEEN

Sri Lanka Catering Limited,
Airport,
Katunayake.

**RESPONDENT-APPELLANT-
APPELLANT**

vs

Kurunage Milred Sandya Hasanthi Perera,
Jathika Sewaka Sangamaya,
No. 416, Kotte Road,
Pitakotte.

**SUBSTITUTED APPLICANT-
RESPONDENT-RESPONDENT**

BEFORE : Yasantha Kodagoda P.C., J.
Kumudini Wickremasinghe, J
M. Sampath K. B. Wijeratne, J.

COUNSEL : Manoli Jinadasa with Dilini Reeves instructed by
Rasika Wellappili for the Respondent- Appellant-
Appellant.

Dilip Obeyesekere with Lal Perera
instructed by H.M. Sanjeevani Priyangika
Dissanayaka for the Substituted Applicant -
Respondent-Respondent.

ARGUED ON : 07.11.2025

DECIDED ON : 20.03.2026

M. Sampath K. B. Wijeratne J.

Factual Background

Jathika Sevaka Sangamaya (hereinafter referred to as the “Trade Union”) filed an application before the Labour Tribunal of Negombo on behalf of one of its members, Kaluappu Kankanamge Don Luke Jagath Kamalpem (hereinafter referred to as the “Applicant”), against the Respondent–Appellant–Petitioner, namely Sri Lanka Catering Limited, a limited liability company incorporated under the laws relating to companies in Sri Lanka (hereinafter referred to as the “Petitioner”).

Relief was sought on the basis that the termination of the Applicant’s services upon his attaining the age of 55 years was unjust and inequitable, particularly in view of the fact that his service had not been extended until he reached 60 years of age. The principal reliefs sought were reinstatement in service until the age of 60 years and the payment of back wages.

The Applicant held the post of Commissary Supervisor in the Petitioner company at the time of his retirement. The Petitioner retired the Applicant from service

with effect from August 26, 2014, upon his attaining the prescribed retirement age of the Petitioner company, namely 55 years. However, the Applicant alleged that his services had been prematurely terminated and, through the Trade Union of which he was a member, sought relief before the Labour Tribunal on the grounds of unjust termination. The Petitioner filed its answer denying that the Applicant's services had been terminated and contended that he had been retired in the ordinary course of events.

The Trade Union filed its replication and averred, *inter alia*, that in the absence of a stipulated retirement age in the Applicant's letter of appointment, he was entitled to continue in employment until the age of 60 years, and that the Petitioner had failed to adhere to the guidelines set out in Circular No. 01/2013 (hereinafter referred to as the "Circular"), issued by the Ministry of Public Enterprises, when retiring the Applicant.

As the Petitioner denied that the Applicant's services had been terminated, the Trade Union commenced the proceedings before the Labour Tribunal. At the inquiry, the Applicant testified and marked documents 'A1' to 'A14'. During the pendency of the inquiry, the Applicant passed away, and his wife was substituted in his place.

The Assistant Human Resources Operations Manager of the Petitioner company and the Additional Director General of the Public Enterprises Department testified on behalf of the Petitioner and marked documents 'R1' to 'R21'.

The evidence led at the inquiry revealed, *inter alia*, that:

- a) Not a single employee of the Petitioner company had worked beyond 55 years of age, and no employee's service has been extended beyond 55 years of age.¹

- b) The Applicant had reached 55 years of age on August 26, 2014.

¹ *Vide* Page Page 99 of the Appeal brief.

- c) The Applicant was informed by the Petitioner, by letter dated July 25, 2014, of his retirement with effect from August 26, 2014, which was accepted by the Applicant without objection. It was only subsequent to such retirement that the Applicant claimed an extension of his period of service up to the age of 60 years.
- d) The claim of the Applicant for extension of his period of service was solely based on Public Enterprise Circular No. 01/2013 (“A6”) which he claimed was applicable to the employees of the Petitioner company. Furthermore, the Department of Public Enterprises confirmed, in response to queries made by the Trade Union, that PED Circular No. 01/2013 applies to the Petitioner company.
- e) However, the Department of Public Enterprises subsequently clarified that its earlier position had been adopted in the absence of awareness that the Petitioner company was bound by collective agreements with the Trade Union. The Department of Management Services further clarified that the PED Circulars apply only to ‘subjects that are not covered by collective agreements.’
- f) At the time the PED Circular marked “A6” was issued, the Collective Agreement for the period 2010-2013 was in force in the Petitioner company, and it stipulated the retirement age of employees as 55 years.
- g) The Additional Director General of Public Enterprises Department specifically confirmed in evidence before the Labour Tribunal that PED Circular 01/2013 did not apply to the Petitioner Company.
- h) The Applicant had admitted before the Labour Tribunal (*Vide* Page 252 of the brief) that he is bound by the 2010-2013 collective agreement which is also reflected in the document marked ‘R6’.

- i) The Collective Agreement for the period 2010–2013 expressly stipulates that the retirement age of an employee is 55 years. Furthermore, the subsequent Collective Agreement for 2013–2016, together with the Disciplinary Procedures Manual and the Human Resources Policy Manual of the Petitioner Company, similarly prescribe the retirement age as 55 years.
- j) The Collective Agreement for 2013–2016, which fixes the retirement age at 55 years, was entered into well after the issuance of PED Circular No. 01/2013 ('A6'). This clearly demonstrates that the Trade Union, by their conduct, have unequivocally acknowledged and accepted that the retirement age stipulated in PED Circular No. 01/2013 is inapplicable to the employees of the Petitioner Company, and have recognized 55 years as the operative retirement age.
- k) The witness of the petitioner Udaya Priyashantha, Assistant Human Resources Operations Manager, confirmed that when a Collective Agreement expires, as a practice, the terms and conditions therein continue until a new collective agreement is entered into. He further confirmed that no employee was given an extension under the Public Enterprises Circular No.01/2013 until 60 years and this evidence was not challenged by the Applicant.

At the conclusion of the Labour Tribunal inquiry, the learned President, by Order dated December 17, 2019, held that the Applicant's retirement age was 60 years and granted relief on the basis that the Collective Agreement for the period 2010–2013 had lapsed by the time the Applicant was retired and that, accordingly, the PED Circular was applicable to him.

Being aggrieved by the Order of the learned President of the Labour Tribunal, the Petitioner preferred an appeal to the Provincial High Court seeking to have the said Order set aside.

By Order dated August 28, 2020, the learned High Court Judge also affirmed the Order of the Labour Tribunal on the same basis as adopted by the learned President of the Labour Tribunal.

Being aggrieved by the Order of the Provincial High Court dated August 28, 2020, the Petitioner sought leave to appeal on the grounds set out in the Petition.

After hearing both Counsel, this Court granted leave to appeal on the following newly framed question of law.

“Did the learned Provincial High Court judge and the President Labour Tribunal err in law in not considering or in failing to consider that the terms and conditions of the collective agreement between Sri Lanka Catering Limited and Sri Lanka Nidahas Sevaka Sangamaya for the period 2010-2013 were implied terms of the contract of the employment the applicant had as at the date on which he reached the age of 55?”

Analysis

Expiration of the Collective Agreement ‘R5’

This case involves two separate Collective Agreements entered into between the Trade Union of the Applicant and the Petitioner company for different periods, namely the Collective Agreement 2010–2013 (‘R5’) and the Collective Agreement 2013–2016 (‘R17’). On January 15, 2013, the Ministry of Finance and Planning issued the Public Enterprises Department Circular No. 01/2013, increasing the compulsory retirement age of employees in public enterprises up to 60 years.

The first Collective Agreement, ‘R5’, lapsed on March 31, 2013. On July 25, 2014, the Applicant, having attained the age of 55 years, was informed by the management of the Petitioner company of his retirement with effect from August 26, 2014, through a letter which the Applicant accepted without raising any objection.

The second Collective Agreement, ‘R17’, was executed long after the issuance of the said Circular, on November 28, 2014, with its effective date backdated to April 1, 2013. Subsequently, on February 16, 2015, the Applicant filed an application before the Labour Tribunal, claiming that he was entitled to continue in service until the age of 60, as the aforementioned Circular applied to him.

The governing principles relating to collective agreements in Sri Lanka are derived from the Right to Organize and Collective Bargaining Convention No. 98, 1949, of the International Labour Organization, which Sri Lanka ratified in 1972. The relevant provisions read as follows:

*“Article 4 - Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, **with a view to the regulation of terms and conditions of employment by means of collective agreements.**” [emphasis added]*

This Convention was primarily intended to protect workers against anti-union discrimination and to promote voluntary negotiations between employers and workers. Beginning with the Constitution, Sri Lanka has given effect to the principles enshrined in the Convention through various legislative enactments. Among these, the Industrial Disputes Act No. 43 of 1950, as amended (hereinafter referred to as the “IDA”) which was enacted even before the ratification of the Convention, specifically addresses “collective agreements” in Part III of the Act.

Although the existing Act does not fully embody the principal doctrines of Convention No. 98, it remains an authoritative instrument applicable in the present context. Under the Industrial Disputes Act No. 62 of 1957, as amended, a collective agreement is defined as ***an agreement which is between any employer and any workmen or any trade union and which relates to the terms and conditions of employment of any workman, or to the privileges, rights or***

*duties of any employer or any workmen or any trade union consisting of workmen, or to the manner of settlement of any industrial dispute.*²

A collective agreement is a contract that governs the terms and conditions of employment for both employers and employees, as well as their respective duties and responsibilities. It establishes a set of guidelines to ensure an orderly, predictable, and harmonious workplace. Accordingly, I am firmly of the view that the interpretation of any statutory provision, or of any term or condition contained in a collective agreement, must be carried out with due regard to the rights of the parties and in a manner that prevents the proliferation of future litigation.

It is admitted that the deceased Applicant, by letter dated September 29, 2010 ('R6'), consented to be bound by the agreement marked 'R5' and remained so throughout his employment. This fact is not in dispute.

Clause 5.1 of Agreement 'R5' expressly stipulated that the Collective Agreement would remain in force only for the specified period, namely from April 1, 2010 to March 31, 2013. Accordingly, by the date of the Applicant's retirement on August 26, 2014, the Collective Agreement 2010–2013 had clearly lapsed.

The Petitioner company did not enter into the subsequent Collective Agreement 'R17' immediately upon the expiry of 'R5'. Although the second Collective Agreement, marked 'R17', was intended to take effect from April 01, 2013, it was in fact signed only on November 28, 2014, approximately 19 months after the expiration of the first agreement. A retrospective effective date of April 1, 2013, was inserted in 'R17', evidently to cover the intervening period during which no collective agreement was in force.

The IDA contains two specific provisions governing the commencement and duration of a collective agreement, as set out in Sections 7(2) and 7(3). The two sub-sections read as follows:

² Section 5 of the Industrial Dispute Act, as amended under No 62 of 1957.

“Section 7 - (1) - (...)

(2)- Where any collective agreement provides that the agreement shall have effect for any period or until any date specified therein, such agreement shall continue in force with effect from the date on which it comes into force as provided in subsection (1) until the end of the period or until the date so specified, unless it ceases earlier to have effect as provided in section 9.

(3)- Where no period or date is specified in any collective agreement as the period during which or the date until which the agreement shall have effect, the agreement shall continue in force with effect from the date on which it comes into force as provided in subsection (1), until it ceases to have effect as provided in section 9.”

Accordingly, the IDA recognizes two categories of collective agreements based on their duration. The first category comprises agreements that remain in force for the specific period expressly stipulated in the agreement itself, such as the Collective Agreement marked ‘R5’. The second category consists of agreements that do not specify a fixed duration.

The written submission of the Petitioner refers to a statement made by a witness, Udaya Priyashantha, Assistant Human Resources Operations Manager of the Petitioner company, to the effect that: **“when a collective agreement expired, as a practice, the terms and conditions continue until a new collective agreement is entered upon [emphasis added]”**.³

Not only the Petitioner but also the Applicant unequivocally acknowledged that, upon the expiration of a collective agreement at the end of its stipulated period, its terms and conditions continue as implied terms of the employment contract. However, this practice is inconsistent with the meaning and effect of Sections 7(2) and 7(3) of the IDA. As noted earlier, the IDA clearly provides that the

³ Vide page 5 of the written submission of the Petitioner.

validity of a collective agreement ceases on the date specified in the agreement itself, to which both parties have consented, unless it terminates earlier in accordance with Section 9, namely through a written notice of termination submitted to the Commissioner by the parties to the agreement.

To elaborate further, when the terms of a collective agreement are treated as implied terms of the contract of employment, their effect should be confined strictly to the validity period specified in the collective agreement. This interpretation is directly supported by the literal meaning of the statutory language.

An author of repute of the “Interpretation of Statutes,” as well as the eminent counsel N.S. Bindra, emphasizes that⁴:

“Legislature is deemed not to waste its words or to say anything in vain. The presumption is always against superfluity in a statute. An Act should be construed as to avoid redundancy or surplusage. It is no doubt true that as a general rule legislatures may be presumed not to make a superfluous provision. (...) In short, a court should not be prompt to ascribe and should not, without necessity or sound reason, impute to the language of a statute, tautology or superfluity. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of the power conferred on the authority as meaningful and effective. A construction which would render the provision nugatory ought to be avoided. No word should be regarded as superfluous unless it is not possible to give a proper interpretation to the enactment, or the meaning given is absurd or inequitable. A court should not be prompt to ascribe and indeed should not, without necessity or some sound reason, impute to the language of a statute, tautology or superfluity. In other words, although surplusage of even tautology is not an uncommon feature in legislature enactments, the ordinary rule is that a statute is never supposed to use words without a meaning. It is a well-settled

⁴ N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997, at p. 676, quoting P. S. T. Langan, *Maxwell on the Interpretation of Statutes*, Twelfth Edition, at p. 256;

*principle of construction that words in a statute are designedly used and an interpretation must be avoided, which would render the provision either nugatory or part thereof otiose.”*⁵

In *Moti Ram Deka, Sudhir Kumar Das and Priya Gupta vs General Manager North East Frontier Railway and General Manager, North Eastern Railway*⁶, Suba Rao, J. at p. 621 paragraph 65 stated that "The general rule of interpretation which is common to statutory provisions as well as to constitutional provisions is to find out the expressed intention of the makers of the said provisions from the words of the provisions themselves." [emphasis added]

In addition, Maxwell has also elaborated in his work: “**On the Interpretation of Statutes**”⁷ that, “Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to “leave the remedy (if one be resolved upon) to others.”

Therefore, where the words are clear and unambiguous, it is the duty of this Court to interpret them as they stand, without altering the intended meaning of the text. If the current wording is considered inadequate, it is for the legislature, and not this Court, to address the issue.

Furthermore, if I were to adopt the view that “despite the operative period specified in the agreement itself, the terms and conditions of the agreement

⁵ N.S Bindra, Interpretation of Statutes, 12th edn, at page 208 and 209.

⁶ *Moti Ram Deka, Sudhir Kumar Das and Priya Gupta vs General Manager North East Frontier Railway and General Manager, North Eastern Railway* AIR 1964 S. C. 600, 621.

⁷ P. St.J. Langan, Maxwell on the Interpretation of Statutes, 12th edn, Sweet & Maxwell Publication, at Page .29.

continue as implied terms of the contract of employment”, then Section 7(2) would be rendered redundant, which is an outcome that could not have been intended by the legislature. Because, as Bindra stated, “the Legislature does not waste words.”⁸

Therefore, it is my considered view that, in accordance with the express meaning of Section 7(2) of the IDA, the terms of a collective agreement are to be impliedly incorporated into the contract of employment only while the agreement is in force, and this effect should not extend beyond the cessation of the collective agreement. As one of the prominent companies in the country, it is surprising to observe that a practice contrary to the IDA has been continued in the Petitioner company for such an extended period.

Moreover, under Section 6 of the IDA, after the parties have signed a written collective agreement, any such party *may* transmit the agreement to the Commissioner, who *shall* cause the agreement to be published in the Gazette if he is satisfied that the terms and conditions are not less favorable than those applicable to any other workmen in the same or a similar industry within the district. It is clear from the wording of the Act that the “publication” of a collective agreement in the Gazette is not mandatory. However, the second limb of the proviso to the same section reads as follows:

*“For the purposes of this section, terms and conditions of employment set out in **any other collective agreement** shall not be deemed to be applicable to any workmen, unless the agreement has been published in the Gazette under this section **and is for the time being in force.**” [emphasis added.]*

The preceding limb means that, once satisfied, the Commissioner cannot, for purposes of comparison, take into account the contents of unpublished collective agreements and is thus limited to agreements **published in the Gazette and still in force**. It is therefore evident that the legislature has consistently emphasized

⁸ N.S Bindra, Interpretation of Statutes, 12th edn, LexisNexis Publication at page 208.

the importance of recognizing only those collective agreements that are in effect at the relevant time.

Apart from that, Section 8(2) of the Act permits the employer to extend the terms and conditions of a collective agreement to all other workmen in the same industry. I now proceed to examine this provision to further illustrate the difficulty in accepting the arguments advanced by the learned Counsel for the Petitioner. For clarity, the section is reproduced below.

*“8(2) - Where there are any workmen in any industry who are bound by a collective agreement, the employer in that industry shall, unless there is a provision to the contrary in that agreement, observe in respect of **all other workmen** in that industry terms and conditions of employment which are not less favourable than the terms and conditions set out in that agreement.”*

I will set up a hypothetical scenario to further explain the aforementioned provision. Assume a workplace called “X Electronics Pvt. Ltd.,” which comprises several sections staffed by different categories of workmen, such as air conditioner repairers and refrigerator repairers. If the collective agreement applies only to the air conditioner repairers, and those conditions are not less favourable than the conditions already in existence, the employer shall extend the same terms to the refrigerator repairers and all other workmen in the company, unless the collective agreement explicitly states otherwise.

In the case of *A.F. Jones (Exporters) Ceylon Ltd. vs Balasubramiam (S.C)*⁹, Justice Wanasundera clarified the meaning of Section 8(2) as follows: *“A reading of the above provision shows that it casts a statutory obligation on the employer to observe terms and conditions which are not less favourable than the terms of the collective agreement, in respect of the other workmen at the work place.”*

⁹ *A.F Jones (Exporters) Ceylon Pvt Ltd vs Balasubramaniam* 1982 2 S.L.R 793.

Now, I will look into the definition of ‘workman’ provided under the IDA, which is;

“Any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship, or a contract personally to such contract whether such person is or is not in employment at any particular time, and includes any person whose services have been terminated.”

In my view, the words “all other workmen” in Section 8(2) refer to workmen who are not parties to the collective agreement, including members of other trade unions, as well as all other categories of employees within the same industry. The use of the word “employer” in the singular further reinforces the interpretation that the provision contemplates a particular, single industry and not any industry beyond it.

Regarding the extension of the terms and conditions of collective agreements, Section 10 of the IDA is also significant. While Section 8(2) empowers the employer to extend the terms and conditions of a collective agreement to other workmen, Section 10(2) confers power on the Minister to issue an order applicable to any employer, in any district or in Sri Lanka, on whom the agreement is not otherwise binding. Simultaneously, under Section 10(7), the Minister is empowered to rescind any such order issued under this provision.

Turning now to Agreement ‘R5’, Clause 6.3 addresses the parties who are covered by and bound to the agreement, even if they are not members of the Trade Union and provides as follows:

*“The Agreement shall cover and bind all individual employees employed in a permanent capacity in Grades 1-7 of the graded staff grade structure **who are not members of the SLNSS but who nevertheless wish to accept the terms and conditions of this Agreement in full by signing on an individual basis.**”*
[emphasis added]

Accordingly, not only do the statutory provisions, but also the ‘R5’ agreement itself, provide for the extension of the agreement to all other workmen in the industry. The intention behind these provisions is to create a better working environment for all workmen because these provisions are based on the presumption that a collective agreement generally contains terms and conditions favorable to employees.

However, in the present case, the agreement ‘R17’ contains an unfavorable provision limiting the retirement age to 55, which had been the policy of the Petitioner company until March 31, 2016. As will be discussed under the next topic of this judgment, following the issuance of the government Circular extending the retirement age to 60, this change should have been incorporated into the subsequent collective agreement ‘R17’ for the benefit of the workmen.

Furthermore, as ruled in *A.F. Jones (Exporters) Ceylon Ltd. vs Balasubraniam*, the Minister is not permitted to selectively extend only favorable provisions of a collective agreement while excluding unfavorable clauses; the entirety of the terms and conditions set out in the agreement must be extended. Therefore, if I were to accept the Petitioner’s version, it would be detrimental to the workers.

In addition to that, the Petitioner has referred to *Hunter and Company Ltd. vs Minister of Labour and Vocational Training and Others*¹⁰, along with Section 8 of the IDA, in its written submission¹¹ to support its position. I will now provide an analysis of these two references.

Section 8(1) of the IDA provides that:

*“Every collective agreement which is **for the time being in force** shall, for the purpose of this Act, be binding on the parties, trade unions (...); **and the terms of the agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement.**” [emphasis added]*

¹⁰ *Hunter and Company Ltd vs The Minister of Labour and Vocational Training and Others* 1997 (1) SLR 337.

¹¹ *Vide* Paragraph 5.4 and 5.6 of the Petitioner’s Written Submission at page 8.

Again, according to the plain and express interpretation of the above section, it means that, while a collective agreement is in force, the terms and conditions contained therein are binding on all parties to the agreement and are implied terms of the contract between the employer and the workmen bound by the agreement. There is no reason to go beyond this clear interpretation or to construe the section otherwise.

I note that His Lordship Gunawardana, J., in *Hunter and Company Ltd.* (Supra) held that *the repudiation of a collective agreement did not terminate “the statutory implied terms,” which continued to remain valid until a new contract of employment was brought into force*”. However, with the highest respect to His Lordship, I am of the view that this interpretation cannot be reconciled logically with Section 7(2) of the IDA, as it would contradict the literal meaning of the section. Accordingly, I respectfully decline to apply the said view to the current case.

On the other hand, if I were to give effect to the ruling in *Hunter’s* case, a collective agreement, once entered into by the parties, would bind them indefinitely, as correctly pointed out by the Applicant in his written submission. Such an interpretation could create an impracticable situation, particularly when a conflict arises between two successive collective agreements on the question, which provision is more favorable on the same issue. In such cases, the question would arise as to which agreement should prevail.

One might argue that the more favorable terms for the workmen in either agreement should apply. However, as with any qualitative measure, “being favorable” is inherently subjective and could give rise to further disputes. Therefore, the most prudent approach is to apply the subsequent collective agreement and ensure that the worker is covered under it.

Applying this reasoning to the present case, the next question is whether the Applicant of the Petitioner company is covered by the second collective agreement, marked ‘R17’. This question will be addressed in the following section of the judgment.

The applicability of the second Collective agreement R ‘17’

Before considering the applicability of the latter agreement, I will first evaluate its compliance with the IDA. As discussed above, under Section 6 of the Act, once a collective agreement is entered into and submitted to the Commissioner, it is the Commissioner’s duty to publish it in the Gazette. However, the proviso to the same section imposes a limitation: the Commissioner is not obliged to publish the agreement unless he is satisfied that its terms and conditions are not less favorable than those applicable to any other workmen in the same or a similar industry within the district.

By the time the agreement ‘R17’ came into operation, the Ministry of Finance and Planning had already issued the Circular, which also applied to the employees of the Petitioner company. I hereby reproduce the relevant rule of the Circular as follows:

“I. The optional age of retirement of employees in public enterprises is 55 years of age, however, if any officer intends to serve beyond this limit, he/she may continue to serve up to the compulsory age of retirement i.e. 60 years of age without applying for an extension of service.”

In simple terms, as a result of this Circular, employees in public enterprises were allowed to continue working up to the compulsory retirement age without applying for an extension of service from the authority in charge. However, the Collective Agreement ‘R17’ did not incorporate the provisions of the Circular at the time of its signing, even though the government had already gazetted a rule extending the compulsory retirement age of public enterprise employees to 60 years, which would have benefited the employees.

Surprisingly, the Trade Union had consented to the Petitioner company’s retirement age policy, which was set at 55 at the time of entering into the agreement. It is also questionable that the agreement was published in the Gazette by the Commissioner despite containing a retirement age that was not favorable to the workers, which appears to be contrary to Section 6 of the IDA.

Furthermore, it is important to note that the Applicant retired before the agreement 'R17' was signed, namely on August 26, 2014, whereas the Agreement was executed on November 28, 2014. Therefore, the Petitioner's argument that the 'R17' collective agreement, with its retrospective effect, covered even the short period during which the previous collective agreement was not in force, is untenable.

The letter sent by the Department of Public Enterprises, marked 'R19' clearly states that the Circular will only apply to the areas that are not covered by the collective agreement, and in the case at hand, the collective agreement had covered the area related to the retirement age of the workers. However, as noted above, since the Applicant retired in the period between the termination of the first collective agreement 'R5' and the signing of the second collective agreement 'R17', no collective agreement was in operation at the time of his retirement. Accordingly, the Circular should apply to the Applicant.

Moreover, even if the Applicant had retired after the agreement marked as 'R17' came into operation, it would still not have applied to him, as he had not consented to be bound by the said Agreement.

Conclusion

In light of the circumstances and reasons set out above, the Public Enterprises Department Circular No. 01/2013, issued by the Ministry of Finance and Planning, should apply to the Applicant in the present case. Accordingly, he should have been allowed to serve until the age of 60.

However, members of the Trade Union who had not retired before the second collective agreement came into force and who were still in service would be covered under the Collective Agreement 'R17'.

I conclude that the Applicant is entitled to back wages from the date of his retirement at the age of 55 until his death on 15 September, 2018. I further hold that it is just and equitable that such back wages be paid, by way of

compensation, to his legal heirs, as the entitlement accrued during his lifetime.
His terminal benefits shall be computed and paid accordingly.

I answer the question of law, on which leave to appeal was granted, in the negative and, accordingly, affirm the judgment of the High Court as well as the order of the Labour Tribunal.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J

I agree.

JUDGE OF THE SUPREME COURT