

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

In the matter of an Appeal to the Supreme Court in terms of the provisions of the Constitution of the Democratic Socialist Republic of Sri Lanka from the Judgment dated 15th June 2012 of the Court of Appeal in CA Writ Application No. 868/08.

Ceylon Petroleum Corporation,
No. 109, Rotunda Tower, Galle
Road, Colombo 03.

Petitioner

SC Appeal No: 15/2014

SC/SPL/LA No: 142/2012

CA Writ Application No: 868/2008

Vs.

1. Commissioner of Labour
Department of Labour,
Colombo 05.
2. C. Waniganayake,
Assistant Commissioner
of Labour- Colombo
West,
5th Floor, Department of
Labour, Colombo 05.
3. W.S.M Boteju
No. 08, Kolonnawa Road,
Wellampitiya

Respondents

AND NOW BETWEEN

Ceylon Petroleum Corporation,
No. 109, Rotunda Tower, Galle
Road, Colombo 03.

Petitioner- Appellant

Vs.

1. Commissioner of Labour
Department of Labour,
Colombo 05.
2. C. Waniganayake,
Assistant Commissioner
of Labour- Colombo
West,
5th Floor, Department of
Labour, Colombo 05.
3. W.S.M Boteju
No. 08, Kolonnawa Road,
Wellampitiya

Respondents-Respondents

BEFORE:

Hon. K.Kumudini Wickremasinghe, J.
Hon. Arjuna Obeyesekere, J.
Hon. Sampath B. Abayakoon, J.

COUNSEL:

Kaushalya Molligoda instructed by
R.A.K.C. Ariyaratna for the
Petitioner-Appellant

Ms. Ganga Wakishta Arachchi DSG for the
1st and 2nd Respondents-Respondents.

Dr. Sunil Cooray with Neminda Gamage
Kariyawasam for the 3rd
Respondent-Respondent.

WRITTEN SUBMISSIONS: By the Petitioner-Appellant on
25.03.2014.

By the 1st and 2nd
Respondent-Respondent on 20.05.2014.

By the 3rd Respondent-Respondent on
22.11.23.

ARGUED ON: 17.02.2025

DECIDED ON: 06.03.2026

K. KUMUDINI WICKREMASINGHE, J.

This is an appeal from a judgment of the Court of Appeal, dated 15th June 2012. The Petitioner-Appellant (hereinafter referred to as the “Appellant”) is a statutory corporation established under the Ceylon Petroleum Corporation Act No. 28, instituted a writ application before the Court of Appeal against the Respondents-Respondents (hereinafter referred to as the “1st and 2nd Respondents and 3rd Respondent”). The said writ application had been instituted challenging an Order dated 14-03-2008 made by the 2nd Respondent, the Assistant Commissioner of Labour, purportedly acting under the Payment of Gratuity Act No. 12 of 1983, as amended. By that Order, the 2nd Respondent had directed the Appellant to pay the 3rd Respondent, a former employee of the Corporation, a further sum of Rs. 269,162.03 as gratuity and surcharge, in addition to the sum of Rs. 208,379.88 already paid upon his retirement.

The 3rd Respondent had initially been appointed to the service of the Appellant on 17-05-1982 as a Grade B2 Instrument Technician. His services had been terminated by letter dated 28-10-1983 with effect from 10-10-1983 on the basis that he had vacated his post. That termination had not been challenged before any court or tribunal. More than a decade later, following a change of Government in 1994, a Political Victimization Committee (PVC) had been appointed to consider representations from public sector employees who claimed to have been politically victimized. The 3rd Respondent had sought relief before the PVC. Upon its recommendations, embodied in a Cabinet Memorandum dated 28-09-1995 and approved by the Cabinet of Ministers, certain former employees had been categorized into two groups: one group, comprising 14 employees, had been recommended for reinstatement with full back wages and arrears of allowances; the other group, comprising 113 employees including the 3rd Respondent, had been recommended for reinstatement or re-employment without back wages, arrears of allowances, or increments, and on the salary scale applicable at the time they had ceased employment.

Acting on the said Cabinet decision, the Appellant had issued a fresh letter of appointment to the 3rd Respondent with effect from 15-11-1995. He had assumed duties on 04-12-1995 and had continued in service until his retirement on 28-06-2007. Upon retirement, the Appellant had computed gratuity solely on the basis of the period from 04-12-1995 to 28-06-2007 and had paid Rs. 208,379.88 in terms of section 6(2) of the Payment of Gratuity Act. The 3rd Respondent had accepted that payment but subsequently lodged a complaint with the 1st Respondent, the Commissioner of Labour, contending that the period from 17-05-1982 to 04-12-1995, including both the initial period of service and the intervening period following termination, ought to have been taken into account in

computing gratuity. Following an inquiry, the 2nd Respondent had issued the impugned Order directing payment of an additional sum, having treated the entire period from 17-05-1982 to 28-06-2007 as “completed service,” without assigning reasons or specifying the statutory basis for such computation.

Before the Court of Appeal, the principal issue had been whether the interruption of service between 10-10-1983 and 04-12-1995, occasioned by the 3rd Respondent’s termination on the ground of vacation of post, precluded the inclusion of the prior period in computing gratuity under sections 6(2)(a) and 20 of the Act. The Appellant had contended that “completed service” required uninterrupted service and excluded any cessation of work attributable to the fault of the workman; that the 3rd Respondent had been placed in the second category under the Cabinet Memorandum due to fault; and that the period of lawful termination constituted an interruption in service disentitling him to gratuity for that duration. The 1st and 2nd Respondents, supported by the 3rd Respondent, had contended that the termination had resulted from political victimization and not from fault; that the Cabinet Memorandum had imposed restrictions only as to back wages and allowances and not as to continuity of service; and that reinstatement presupposed continuity of employment. By judgment dated 15-06-2012, the Court of Appeal had dismissed the Appellant’s application and held that the entire period prior to re-employment had to be included in computing gratuity. Being aggrieved thereby, the Appellant had sought an appeal to this court.

This Court by Order dated 11th February 2014, granted Leave to Appeal on the questions of law stated in sub paragraphs (a), (b) and (c) of the Petition dated 27th February 2012, as set out below.

- 1. Did the Court of Appeal err in holding that the period prior to the 3rd Respondent's reinstatement/re-employment on 04-12-1995 must be included in computing the period of services for purposes of gratuity in terms of the Act?**
- 2. Did the Court of Appeal err in its application of the provisions of section 6(2)(a) read with section 20 of the Act to the facts and circumstances of this case?**
- 3. Did the Court of Appeal err in its failure to consider that the words '*any cessation of work not due to any fault of the workman*' must be read *ejusdem generis* with the preceding grounds stipulated in section 20 of the Act, viz: 'approved leave, 'strike' or 'lock out', which clearly presupposes a refusal by an employer to allow the employee to work despite a clear intention displayed by the employee to do so?**

My analysis hereafter will be confined to examining the aforesaid questions of law based on which leave was granted.

The first matter for consideration by this court is namely: **Did the Court of Appeal err in holding that the period prior to the 3rd Respondent's reinstatement/re-employment on 04-12-1995 must be included in computing the period of services for purposes of gratuity in terms of the Act?**

The Appellant contends that the 3rd Respondent had vacated his post and that his subsequent engagement on 04.12.1995 constituted fresh employment. It is submitted that gratuity is statutorily payable only in respect of completed years of continuous service, and that where an employee has ceased to be in service and is thereafter re-employed, the previous period cannot automatically be aggregated unless the statute expressly permits such aggregation. The Appellant argues that

the Court of Appeal mischaracterised the facts by treating the reinstatement as a continuation of service when, in truth, there had been a cessation which legally terminated the employment relationship. The Appellant further maintains that the statutory concept of “*cessation of work not due to any fault of the workman*” does not encompass circumstances where the employee had, by conduct or operation of law, ceased to hold the post.

The 1st and 2nd Respondents, together with the 3rd Respondent, submitted that the cessation in question was not attributable to any fault on the part of the 3rd Respondent and that the subsequent reinstatement demonstrates that the employer–employee relationship was treated in substance as subsisting. They contend that labour legislation, being remedial and social welfare oriented, must receive a beneficial and purposive interpretation. It is argued that the interruption in service fell squarely within the statutory protection afforded by section 6(2)(a) read with section 20, and that to exclude the earlier period would defeat the protective object of the Act. The Respondents further submit that the Court of Appeal correctly appreciated the factual matrix and properly applied the statutory provisions in favour of continuity.

Section 6 of the **Payment of Gratuity Act** is as follows:

“(1) The provisions of this part shall apply to and in relation to a workman employed in any industry in respect of the entire period of service under an employer;

Provided, however that, where a workman who is entitled to a gratuity under Part I of this Act continues in employment after the agricultural land or estate land on which he was employed vested in the Land Reform Commission by the operation of the Land Reform Law, or the

land on which he was employed was acquired under the Land Acquisition Act and is entitled to a gratuity under this Act, the period of service of such workman shall include the period of service in respect of which he is entitled to a gratuity under Part I of this Act, and, the gratuity in respect of the aggregate period of service shall be paid by the employer who is liable in terms of subsection (1) of section 5:

Provided, further that, notwithstanding anything to the contrary in Part I of this Act, the amount of the, gratuity to which such workman is entitled under that Part shall be remitted to the said employer who shall be liable to pay a gratuity in respect of the aggregate period of service of such workman.

(2) A workman referred to in subsection (1) of section 5 shall be entitled to receive as gratuity, a sum equivalent to-

(a) half a month's, wage or salary for each year of completed service computed at the rate of wage or salary last drawn by the workman, in the case of a monthly rated workman; and

(b) in the case of any other workman, fourteen days' wage or salary for, each year of completed service computed at the rate of wage or salary last drawn by that workman:

Provided, however that, in the case of a piecerated workman the daily wage or salary shall be ,computed by dividing the total wage or salary received by him for a period of three months immediately preceding the termination of his employment, by the number of days worked by him in that period.

(3) Notwithstanding the provisions contained in subsection (2), the gratuity payable to a workman referred to in the first provision to subsection (1) in respect of the period of service for which he is entitled

to a gratuity under Part I of this Act, shall be computed at the rate of a sum equivalent to fourteen days' wage or salary of that workman for each year of completed service based on the rate of wage or salary payable in the month in which such land vested in the Land Reform Commission or was acquired under the Land Acquisition Act.”

Section 20 which is the interpretation section of the **Payment of Gratuity Act** sets out the definition of a workman as follows:

““completed service” means uninterrupted includes service which is interrupted by approved leave on any ground whatsoever, a strike or lock out or cessation of work not due to any fault of the workman concerned, whether such uninterrupted or interrupted service was rendered before or after the coming into operation of this Act”.

The determination of this issue turns on the proper construction of section 6(2)(a) of the Payment of Gratuity Act, read together with section 20. Section 6(2)(a) contemplates circumstances in which certain interruptions do not break continuity of service. Section 20 provides that in computing periods of service, time during which a workman is on approved leave, on strike, on lockout, or during any cessation of work not due to any fault of the workman, shall be included. It is well established that labour statutes of this character are to be interpreted in a manner that advances their social purpose. At the same time, the court must remain faithful to the statutory language and cannot extend the scope of the Act beyond its plain meaning under the guise of beneficent interpretation.

In ***The Finance Co. Ltd. v. Koddippili* [2005] 3 Sri L.R. 281**, where the employee had ostensibly retired and was thereafter granted an extension of service. It was contended that the retirement operated as

a legal severance and that the subsequent period constituted new employment. Rejecting that contention, the Court of Appeal held:

“In view of the fact that the Petitioner was given an extension before the retirement date and he continued in service in the same capacity even after the said date of retirement, the salary that was offered during the extension indicates that the 1st respondent’s annual increments were taken into consideration. This Court is of the view there is no break in service on the date of retirement.”

The Court further observed:

“In determining the continuity of service and to determine the obligation cast by law upon the employer under the Gratuity Act the acceptance of the gratuity will not have a bearing.”

The principle emerging from that decision is that the court must examine the substance of the employment relationship rather than its formal description. Where the employee continues in service in the same capacity and without a demonstrable legal severance of the relationship, the law will not treat the intervening event as creating a break in service for purposes of gratuity. The focus must remain on whether there was a genuine termination in law or merely an interruption not amounting to severance.

The Supreme Court in ***Brown & Company Ltd v. Commissioner of Labour & Ors.***, SC Appeal No. 84/2011 decided on 03.08.2016, considered whether an employee who had retired, accepted gratuity, and thereafter continued under fixed-term contracts could claim continuity of service for gratuity purposes. Rejecting the reasoning of the Court of Appeal, the Supreme Court held:

“I find that the Court of Appeal has gone wrong in its judgment by having decided that the service was not interrupted just because the Complainant Respondent had physically come to work on the very next day after the date of retirement... The Court of Appeal had ignored the fact that he was retired and then he accepted the fixed term contract and commenced services anew according to the contract.”

The Court thus recognised that a lawful retirement followed by fresh contractual engagement constitutes a legal interruption of service, and that physical continuity is not determinative of “completed service” within the meaning of Section 20 of the Payment of Gratuity Act.

The above position has been reaffirmed in ***Madulsima Plantations PLC v Commissioner General of Labour CA (Writ) Application No. 345/2021, decided 23.01.2024***, where the Court of Appeal was confronted with a materially similar factual matrix. The employee had retired upon reaching the compulsory retirement age, accepted full payment of gratuity, expressly acknowledged that he had no further claims, and thereafter re-engaged under a series of fixed-term contracts. The Commissioner of Labour nevertheless determined that there had been uninterrupted service from 1973 to 2018 and directed payment of further gratuity with surcharge.

Quashing that determination, the Court held that once retirement had taken effect and gratuity had been accepted, subsequent fixed-term contracts constituted fresh engagements and did not revive the earlier contract of service. The Court emphasized that administrative authorities cannot disregard clear documentary evidence demonstrating termination and re-engagement.

The most forceful articulation of the governing principle is found in the Court's reliance on *Brown & Co.*, where it reaffirmed:

“Having accepted the legally due gratuity... the Respondent cannot make a claim to be paid gratuity for a period of time for which he was paid once. The moment gratuity is accepted... he is estopped in law from making any claim for that past period for which he accepted gratuity once.”

The Court further held that the Labour Commissioner's failure to consider the employee's express retirement, written acknowledgment of termination, and acceptance of gratuity rendered the decision illegal, irrational, arbitrary and ultra vires. Importantly, the Court distinguished situations involving a genuine extension of service from those involving retirement followed by fixed-term contractual re-engagement. Where the latter occurs, the statutory requirement of “*completed service*” under Section 20 of the Payment of Gratuity Act must be satisfied independently in respect of each new contract. Absent five years of uninterrupted service under the fresh engagement, no gratuity entitlement arises.

This decision therefore strengthens the doctrinal position that physical continuity of work does not equate to legal continuity of service, particularly where retirement has intervened and statutory gratuity has been accepted. It also underscores the limits of administrative discretion in gratuity determinations.

On the facts as found, the critical question is whether the pre-04.12.1995 period formed part of a legally continuous service or whether there had been a definitive termination followed by fresh employment. If the cessation amounted to a legal severance of the employment relationship, the statute would not permit artificial

aggregation. However, if the interruption fell within one of the statutorily protected categories and did not amount to a true termination, continuity would be preserved.

The material placed before the Court indicates that the 3rd Respondent was reinstated to employment. In its ordinary legal meaning, reinstatement entails the restoration of an employee to a previous position with continuity of rights and status, rather than the creation of an entirely new contractual relationship. Absent express evidence that the reinstatement was conditional upon a fresh engagement terminating all prior service rights, the law will presume continuity, particularly where the employee resumes the same functions and remuneration under terms substantially similar to the previous service. In this context, the remedial and protective purpose of the Payment of Gratuity Act must inform the interpretation of “*completed service*” under Section 20. The statute is designed to secure the financial rights of employees and prevent unjust deprivation of gratuity, and a narrow formalistic reading that artificially severs periods of employment would frustrate that legislative intent.

Given these considerations, the Court of Appeal acted correctly in treating the 3rd Respondent’s service as continuous for the purposes of gratuity. The decisive question is whether, in substance, the employment relationship persisted despite any technical interruption. Where the facts demonstrate that the employee resumed the same role, received the same rights and privileges, and was not required to forfeit prior entitlements, a legal severance cannot be inferred merely from formalities such as a retirement letter or temporary cessation. Consequently, the pre-04.12.1995 period properly forms part of the aggregate completed service, and the statutory requirement of

uninterrupted service is satisfied. On this basis, the first question of law must be answered in the negative, and the Court of Appeal's conclusion aligns both with the plain language of Sections 6(2)(a) and 20 and with the remedial purpose of the Act.

The second main issue raised is namely: **Did the Court of Appeal err in its application of the provisions of section 6(2)(a) read with section 20 of the Act to the facts and circumstances of this case?**

The Appellant submits that the Court of Appeal erred in law by conflating distinct statutory provisions and by extending Section 20 of the Payment of Gratuity Act beyond its intended scope. It is contended that Section 6 governs eligibility and quantum of gratuity, whereas Section 20 merely defines limited categories of interruption that do not break continuity. The gravamen of the Appellant's argument is that the Court of Appeal treated the entire disputed period as statutorily protected without first identifying whether the interruption properly fell within any of the enumerated categories under Section 20.

The Respondents maintain that Section 6(2)(a) cannot be read in isolation. They submit that Section 20 is definitional and clarificatory in nature, and that it must be read harmoniously with Section 6 in determining what constitutes "completed service." Once it is established that a cessation of work was not due to any fault of the workman, the statutory consequence, they argue, is that such period must be included in computing gratuity.

In construing these provisions, the Court must apply settled principles of statutory interpretation. The Act must be read as a coherent and integrated scheme. Section 6 creates the substantive entitlement to gratuity upon termination after a prescribed period of completed service. Section 20, by contrast, explains what amounts to "completed

service” and identifies interruptions that do not disrupt continuity. The phrase “any cessation of work not due to any fault of the workman” is couched in deliberately broad language. The legislature, having specified approved leave, strike, and lockout, proceeded to employ expansive residual terminology. There is no textual limitation confining that phrase to temporary suspensions alone.

Guidance on the proper approach is found in ***Original Apparel (Private) Limited v. Commissioner General of Labour & Ors., C.A. (Writ) Application No. 158/22 (10.08.2023)***, where the Court was confronted with a comparable argument that prior service could not be aggregated due to resignation and subsequent fixed-term engagements. Rejecting a formalistic approach, the Court held:

“The phrase ‘completed service’... means uninterrupted service and includes service which is interrupted by approved leave... strike or lockout or cessation of work not due to any fault of the workman concerned... The mere fact that there exist gaps... does not necessarily mean that there was... interrupted service.”

In the same judgment, the Court underscored the supremacy of statutory obligation over private contractual arrangements:

“The liability to pay gratuity... imposed by the Payment of Gratuity Act... cannot be overridden by an agreement between the parties... a condition under an agreement between parties cannot override the general law of the country.”

These pronouncements encapsulate two governing principles: first, that continuity of service must be assessed in substance rather than by technical fragmentation; and second, that contractual devices cannot be employed to defeat statutory gratuity rights. The focus is

not on the mere existence of formal gaps or documentary labels, but on whether the employment relationship, viewed in its totality, continued without fault attributable to the workman.

Applying those principles to the present facts, the cessation in question was not demonstrated to have arisen from misconduct, abandonment, or any culpable default on the part of the 3rd Respondent. There is no material indicating that the employment relationship was lawfully terminated in a manner extinguishing accrued rights. Rather, the subsequent reinstatement, viewed objectively, supports the inference that the relationship was treated in substance as subsisting. In the absence of proof of a definitive legal severance attributable to the employee, the interruption falls within the broad statutory formulation of “*cessation of work not due to any fault of the workman.*”

Accordingly, the Court of Appeal cannot be said to have misdirected itself in law in reading Section 6(2)(a) together with Section 20. Its interpretation accords with the plain language of the statute and with its protective, social-welfare purpose. The second question of law must therefore be answered in the negative.

The next question of law on which leave has been granted is, namely: **Did the Court of Appeal err in its failure to consider that the words '*any cessation of work not due to any fault of the workman*' must be read *ejusdem generis* with the preceding grounds stipulated in section 20 of the Act, viz: 'approved leave, 'strike' or 'lock out', which clearly presupposes a refusal by an employer to allow the employee to work despite a clear intention displayed by the employee to do so?**

The Appellant submits that the residual phrase “*any cessation of work not due to any fault of the workman*” in Section 20 of the Payment of Gratuity Act, No. 12 of 1983, must be construed *ejusdem generis* with the preceding enumerated categories of “*approved leave, strike, or lockout.*” These categories, it is argued, represent temporary interruptions within an otherwise subsisting employment relationship, and the residual clause should be similarly confined to suspensions of work of a temporary nature, and cannot extend to situations involving termination followed by re-engagement. The Respondents, however, contend that the *ejusdem generis* principle has no application where the statutory language is intentionally broad, and where the enumerated categories do not constitute a narrow, identifiable genus. They submit that the legislature deliberately employed expansive language to capture all cessations of work not attributable to the employee’s fault.

The issue turns on the interpretation of Sections 6(2)(a) and 20 of the Act. Section 6(2)(a) prescribes the computation of gratuity in respect of a workman’s completed service, while Section 20 defines “completed service” as: “*uninterrupted service and includes service which is interrupted by approved leave on any ground whatsoever, a strike or lockout or cessation of work not due to any fault of the workman concerned, whether such uninterrupted or interrupted service was rendered before or after the coming into operation of this Act.*” By the plain language of the statute, only certain types of interruptions, those not attributable to the workman’s fault, are statutorily protected. Any cessation falling outside these enumerated or specified categories constitutes a break in service for gratuity purposes.

The *ejusdem generis* rule, as a canon of statutory construction, is a tool to be applied only where the specific words form a distinct and

identifiable class and the general words are capable of a restricted meaning consistent with that class. It is not a rule of law but an aid to ascertain legislative intent. In the present context, “*approved leave*,” “*strike*,” and “*lockout*” do not constitute a narrow genus defined by a single common characteristic. They differ in legal origin, voluntariness, and duration, and the unifying feature is not the employer’s refusal alone, but rather the absence of fault on the part of the workman. The residual clause expressly emphasises the absence of fault as the operative criterion. To restrict this phrase solely to employer-initiated refusals or temporary interruptions would read into the statute a limitation which the legislature deliberately chose not to impose.

The principles established in ***Brown & Company Ltd v. Commissioner of Labour & Others***, SC Appeal No. 84/2011 (Supreme Court, 03.08.2016), are directly apposite. In that case, the Supreme Court considered whether an employee who retired, accepted gratuity, and then continued under fixed-term contracts could claim continuity of service. Rejecting the reasoning of the Court of Appeal, the Supreme Court held: “*The Court of Appeal has gone wrong in its judgment by having decided that the service was not interrupted just because the Complainant Respondent had physically come to work on the very next day after the date of retirement... The Court of Appeal had ignored the fact that he was retired and then he accepted the fixed term contract and commenced services anew according to the contract.*” The Court emphasized that lawful retirement followed by a fresh contractual engagement constitutes a legal interruption of service, and that physical continuity alone does not satisfy the statutory requirement of completed service.

This reasoning was further reinforced in ***Habarana Lodge Limited v M D C Amarathunga Commissioner General of Labour CA WRIT 236/2015 decided on 01.06.2016***, where the Court interpreted Section 20 and reaffirmed that: *“Completed service’ by definition includes only those interruptions specified in the Act, such as approved leave, strikes, lockouts or cessation of work not due to any fault of the workman.”* These authorities underscore that statutory protection of gratuity applies exclusively to legally recognized interruptions, and cannot be extended to arbitrary breaks or formal cessations of employment.

Applying these principles to the present facts, it is evident that the 3rd Respondent’s retirement constituted a definitive legal cessation of employment. Gratuity in respect of service up to the retirement date was fully paid and expressly acknowledged, thereby extinguishing any claim for that period. The subsequent fixed-term contracts, entered into after retirement, constitute fresh engagements. No provision of the Act permits aggregation of prior completed service with service under a new contract. The Commissioner of Labour’s determination that the post-retirement period represents uninterrupted service is therefore contrary to the statutory language, ignores documentary evidence of retirement and gratuity acceptance, and is, in consequence, illegal, irrational, arbitrary, and ultra vires.

In conclusion, a lawful retirement accompanied by acceptance of gratuity constitutes a definitive severance of the employment relationship. Subsequent fixed-term engagements constitute new contracts, and continuity of service for gratuity purposes cannot be presumed. The breadth of the statutory language demonstrates that only interruptions where the employee is blameless are protected, and the ejusdem generis rule has limited application in this context.

Accordingly, the Court of Appeal did not err in declining to confine the residual clause to situations strictly analogous to strike or lockout. The third question of law must therefore be answered in the negative.

When considering all the above-discussed circumstances, it is evident that the Court of Appeal neither misdirected itself in law nor misapplied the relevant statutory provisions. The interpretation adopted by that Court was consistent with the language, structure, and object of the Payment of Gratuity Act. The pre-reinstatement period was properly treated as forming part of the 3rd Respondent's completed service, as the cessation in question was not shown to amount to a definitive legal severance of the employment relationship.

Therefore, having examined the facts of the case and the material placed before this Court, I see no reason to interfere with the judgment of the Court of Appeal. The judgment of the Court of Appeal is hereby affirmed.

Accordingly, I answer all three questions of law on which leave has been granted in the negative and dismiss the appeal of the Appellant.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYSEKERE, J.

I have had the benefit of reading in draft the judgment of my sister.

It is admitted that the 3rd Respondent had joined the services of the Appellant on 17th May 1982 and had been served with a vacation of post notice with effect from 10th October 1983. It is clear from the

Cabinet Memorandum dated 28th September 1995 that pursuant to the elections held in 1994, the newly elected Government had offered redress to those who claimed they had lost their employment in the Government and Semi Government sectors owing to political victimization. While the need for me to consider the propriety of granting relief on the basis of political victimisation does not arise in this case, the said Cabinet Memorandum had been presented to provide redress to those who had been victimized pursuant to the elections of 1977 and to those who had lost their jobs pursuant to the general strike in July 1980. The 3rd Respondent could not have qualified under either of these categories since he had joined the services of the Appellant only in 1982.

Be that as it may, the Cabinet Memorandum has recommended that 14 employees be reinstated with back wages and be placed on the appropriate salary step while a further 113 employees including the 3rd Respondent were to be reinstated without back wages and at the salary step that they were at, at the time of the termination of their services.

The Appellant contended that the non-payment of back wages for the period that the 3rd Respondent was not in employment is a clear indication of a finding that the termination was due to the fault of the 3rd Respondent and therefore the period between 10th October 1983 – 15 th November 1995 cannot be brought under the definition of “completed service” found in Section 20 of the Payment of Gratuity Act.

While this argument certainly has merit especially since gratuity is a lump sum payment made in recognition of loyal and faithful service,

the Appellant has not submitted a copy of the recommendations made by the Committee that went into the claim of the 3rd Respondent that he was subjected to political victimization which would have contained the reasons for the reinstatement of the 3rd Respondent without back wages nor has the Appellant substantiated its position that the Committee found that the cessation of work by the 3rd Respondent was due to his fault.

While the letter by which the 3rd Respondent has been reinstated does not give any indication of the reasons for the non-payment of back wages, I am of the view that the entitlement of the 3rd Respondent to the payment of gratuity for the period that he was not in service is a matter that the Appellant ought to have given consideration to at the time the 3rd Respondent was reinstated.

In these circumstances, I agree with the conclusion reached by my sister.

JUDGE OF THE SUPREME COURT

SAMPATH B. ABAYAKOON, J.

I had the privilege of considering the draft judgment of my sister Her Ladyship Hon. Justice Kumudini Wickremasinghe and also the additional reasoning given by my brother, His Lordship Justice Arjuna Obeyesekere while agreeing with the draft judgment.

Having Considered the draft judgment and the reasoning given by Hon. Justice Arjuna Obeyesekere, while agreeing with the said view, I agree with the conclusions reached by Her Ladyship Justice Kumudini Wickremasinghe in dismissing the appeal of the appellant.

JUDGE OF THE SUPREME COURT