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

In the matter of an application for Leave to Appeal made in terms of Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka, read with the provisions of Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 (as amended) and Industrial Disputes Act No. 43 of 1950 as amended by Act No. 32 of 1990.

P. D. Premasiri,
Depot Road,
Kekirawa.

APPLICANT

Supreme Court Case No.
SC/Appeal No. 169/2025
LT Anuradhapura Case No.
No. 27/Anu/2358/2015
High Court Appeal No.
NCP/PHC/ANP/LT/APP/
48/2018

vs.

Sri Lanka Transport Board,
No. 200, Kirula Road,
Narahenpita,
Colombo.

RESPONDENT

AND BETWEEN

P. D. Premasiri,
Depot Road,
Kekirawa.

APPLICANT-APPELLANT

vs.

Sri Lanka Transport Board,
No. 200, Kirula Road,
Narahenpita,
Colombo.

RESPONDENT–RESPONDENTS

AND NOW BETWEEN

Sri Lanka Transport Board,
No. 200, Kirula Road,
Narahenpita,
Colombo.

RESPONDENT–RESPONDENT-APPELLANT

vs.

P. D. Premasiri,
Depot Road,
Kekirawa.

APPLICANT-APPELLANT-RESPONDENT

BEFORE : **MAHINDA SAMAYAWARDHENA, J.**
K. PRIYANTHA FERNANDO, J.
K. M. G. H. KULATUNGA, J.

COUNSEL: Rajitha Perera, DSG, for the Respondent-Respondent-Petitioner.

Amitha Silva instructed by Vivendra Ratnayake for the Applicant-Appellant-Respondent.

ARGUED ON: 24.03.2026

DECIDED ON: 29.04.2026

JUDGMENT

K. M. G. H. KULATUNGA, J.

1. This appeal arises from an employment dispute between the Applicant-Appellant-Respondent (hereinafter referred to as "the respondent") and the employer, the Respondent-Respondent-Appellant, Sri Lanka Transport Board (SLTB) (hereinafter referred to as "the appellant"), which originated in the Labour Tribunal (LT) of Anuradhapura.

2. The respondent was initially appointed as a Bus Conductor in 1998 and later promoted as a Depot Inspector in 2004. It is common ground that the respondent eventually vacated his post in 2012. Thereafter, in or around 2015, the respondent had obtained a recommendation from a Political Victimisation Committee for his reinstatement. In view of this recommendation, the appellant SLTB has re-engaged the respondent in employment by letter dated 27.04.2015. The said letter was marked and produced as A-1 before the Labour Tribunal (the contents of which would be reproduced and considered later). The appellant has re-engaged the respondent for a period of 6 months on contract basis commencing on 27.04.2015, which period ended on 27.10.2015.

3. It is common ground that the respondent was not engaged or employed thereonwards. The respondent has accordingly filed an application in the Labour Tribunal dated 24.11.2015, alleging that his employment was unjustly and unlawfully terminated and, accordingly, sought reinstatement with back wages or, in the alternative, compensation.

4. The position taken up by the appellant was that the respondent was employed on contract basis for a period of six months, and the employment was determined with the effluxion of time, upon the expiry of six months. The appellant's position was that there was no termination in law or fact and sought dismissal of the application. Upon

inquiry, the Labour Tribunal President dismissed the respondent's application by order dated 19.10.2018 ("X-2").

5. Aggrieved thereby, the respondent appealed to the Provincial High Court of the North Central Province, holden in Anuradhapura, and the High Court set aside the Labour Tribunal's decision by order dated 11.06.2020 ("X-1"). The Provincial High Court found that the respondent had been re-engaged on contract for 6 months, and as there were others who were similarly placed and granted permanent employment, the non-extension of the services of the respondent was unjust and unlawful.

6. The appellant, being dissatisfied and aggrieved by this decision, sought Special Leave to Appeal, and this Court, on 17.09.2025, granted Leave on the following question of law set out in paragraph 10*(d)* of the petition:

> *"Did the Learned Provincial High Court Judge err in law when he decided that the decision not to extend the Respondent's employment amounts to an unreasonable termination of services?"*

7. This question of law is based on the premise that the re-engagement was on contract basis for a fixed term and on whether the non-extension was unreasonable. Thus, the matter for consideration in this appeal is basically if the failure to extend the contract of employment upon its lapse is unjust and unlawful.

8. Upon the Political Victimisation Committee's recommendation, the letter of re-engagement issued to the respondent dated 27.04.2015 ("A-1") is as follows:

> "ගමගේ දොන් ප්‍රේමසිරි මහතා,
> ඩිපෝ පාර,
> කැකිරාව.

<u>සේවය ප්‍රතිෂ්ඨාපනය කිරීම - ඩිපෝ මාර්ග පරීක්ෂක - VII A ශ්‍රේණිය</u>

ඉහත කරුණ සම්බන්ධයෙන් ඔබ විසින් දේශපාලන පළිගැනීම් කමිටුව වෙත ඉදිරිපත් කරන ලද අයදුම් පත හා බැඳේ.

ඒ අනුව දේශපාලන පළිගැනීම් කමිටු නිර්දේශය හා ශ්‍රීලංගම සභාපතිතුමාගේ අනුමැතිය පරිදි ඔබගේ සේවය අවසන් කල දින සිට 2015-04-27 දින දක්වා පසු පඩි රහිතව සේවා කණ්ඩනයකින් තොරව ඉහත සඳහන් තනතුරෙහි 2015.04.28 දින සිට සේවයේ ප්‍රතිෂ්ඨාපනය කරමි.

තවද ඔබ පාරිතෝෂික මුදල් ලබාගෙන ඇත්නම් හා/හෝ 2011 අංක 15 දරණ ශ්‍රීලංගම මානව සම්පත් කළමණාකරන කොට්ඨාශ චක්‍ර ලේඛයට අනුව අඛණ්ඩ සේවා දිගුවකට ඔබ හිමිකම් නොකියන්නේ නම් ඔබ වෙත සේවය ප්‍රතිෂ්ඨාපනයක් ලබා දී ඇති නමුත්, මෙම පත්වීම් දිනයේ සිට හය මසක (06) කාල සීමාවක් සඳහා කොන්ත්‍රාත් පත්වීමක් වශයෙන් සලකා 2008 අංක 6 දරණ මුදල් කොට්ඨාශ චක්‍රලේඛණයේ 3:1 ඡේදයේ උපදෙස් පරිදි වේතන ගෙවීම් කටයුතු කරනු ඇත.

ඔබට නිකුත් කරන ලද පළමු පත්වීම් ලිපියේ සඳහන් සෙසු කොන්දේසි නොවෙනස්ව පවතින බව දන්වමි.

ඒ අනුව ඔබ 2015.04.28 දින ශ්‍රී ලංගම කැකිරාව ඩිපෝවේ ඩිපෝ කලමනාකාර වෙත සේවය සඳහා වාර්තා කරන්න.

[Signed]
ප්‍රධාන මානව සම්පත් කළමණාකාර
ශ්‍රී ලංකා ගමනාගමන මණ්ඩලය"

9. The President of the Labour Tribunal thus held that this letter has only granted an appointment on contract basis for 6 months. Accordingly, it was concluded that, with the lapse of time, the respondent ceased to hold office and there was no termination. The Judge of the Provincial High Court found that there was unjust termination due to the non-extension and ordered reinstatement and awarded back wages, and if the respondent had reached his age of retirement, back wages with all allowances up until he retired was awarded.

10. At page 11 of the judgment, the learned High Court Judge held as follows:

> "මෙම නඩුවේ කරුණු අනුව හුදු කොන්දේසියක් පනවා ඇත්තේ පාරිතෝෂිකය ලබාගෙන ඇත්නම් ස්ථිර සේවකයකු ලෙස නැවත ඉල්ලුම්කරුව නැවත බඳවා ගැනීමට නොහැකි බවයි. කෙසේ නමුත් ඊට පටහැනිව වෙනත් අය පාලන අධිකාරියේ අභිමතය පරිදි බඳවාගෙන ඇති අතර, ඒ අනුව මෙම අධිකරණයට පෙනී යන්නේ, ඉල්ලුම්කරු සහ අනෙකුත් සේවකයන් අතර අසාධාරණ ලෙස කටයුතු කර ඇති බවයි. නිදසුනක් ලෙස A7 ලේඛනයෙහි සේවය ප්‍රතිශ්ඨාපනය කිරීම ගිනුම් නිලධාරී ජානකී ශ්‍යාමලී ද සිල්වා මහත්මියගේ සේවය ප්‍රතිශ්ඨාපනය කිරීමේ කොන්දේසි 1,2 අනුව පෙර සේවාකාලය සඳහා යම් පාරිතෝෂික මුදලක් ලබා ගෙන ඇත්නම් එය විශ්‍රාම යාමේදී ලබා ගන්නා ලද පාරිතෝෂික මුදලෙන් අඩු කර ඉතිරි පාරිතෝෂික මුදල ගෙවන බවට ඉතා සහනදායී කොන්දේසියක් ඇයට ලබා දී ඇති අතර, එවැනි කොන්දේසියක් ඉල්ලුම්කරුට නැවත සේවයේ ප්‍රතිශ්ඨාපනය කිරීමේදී ලබා දී නොමැති බවත්, ඒ අනුව ඉල්ලුම්කරුගේ **සේවය දීර්ඝ නොකිරීම** අසාධාරණ ලෙස සේවය අවසන් කිරීමක් බවත් මෙම අධිකරණයේ මතය යි." (emphasis added)

11. According to the aforesaid, it is clear that the High Court found that the respondent had been appointed on contract basis for 6 months, but the non-extension upon the lapse of the said period is not just and equitable. In support of this conclusion, the High Court refers to and relies on the opinion of S. R. De Silva found in Monograph No. 4, "The Contract of Employment", at paragraphs 188 and 189, and the decision of the UK Employment Appeals Tribunal in ***Royal Surrey County NHS Foundation Trust v. Drzymala*** (2018) UKEAT/0063/17/BA (which will be considered later in this judgment).

12. Now I will consider the contents and the impact of letter A-1. No doubt, the heading states that it is re-instatement to the post of Depot Inspector. Then, it narrates that in view of the decision of the Political Victimisation Committee, he is reinstated in service, with effect from 28.04.2015. However, having so stated it is qualified by the 3rd paragraph, which, in effect, is a proviso to the preceding paragraph of this letter. It is that, if he had previously obtained and collected his gratuity, though he had been reinstated, this appointment would be for a period of six months on contract basis, and he would be paid

accordingly. This condition is referable to the SLTB Human Resources Management Circular No. 15 of 2011. No doubt, paragraph 04 provides that this is subject to the other conditions contained in the first Letter of Appointment. The qualification made by the use of words "other conditions" puts it beyond doubt that, subject to it being a contract for 6 months, the rest and residue of the other conditions will apply. Considering the totality of the contents of this letter, its tenor, effect, and import is that he is reinstated, provided that he has not obtained or accepted his gratuity previously, and if so, it would be an employment on contract basis for six months.

13. On a perusal of the evidence, it is apparent that the respondent himself had so understood and accepted the appointment as being an appointment for a period of 6 months on contract basis. At page 106 of the brief, the respondent, under cross-examination, has admitted that he was told it was an employment on contract basis but claims to have been told that this would be converted into permanent employment upon the lapse of 6 months. The relevant portion of the evidence reads as follows:

> "ප්‍ර: ඒ කියන්නේ මෙම පත්වීම් දිනයේ සිට 6 මාසික කාල සීමාවක් සඳහා කොන්ත්‍රාත් පත්වීමක් ලෙසින් නේද ක්‍රියාත්මක වෙන්නේ?
>
> උ: කොන්ත්‍රාත් පත්වීමක් කිව්වට අපිට කිව්වේ ස්ථිර පත්වීමකට පරිවරතනය වෙනවා කියලා. මාස 6න් පස්සේ ස්ථිර වෙනවා කියලා කිව්වා."
>
> (at page 106 of the brief)

14. Though the respondent claims to have been given some undertaking of granting a permanent appointment, he was unable to substantiate the same. According to the respondent, he himself had been aware of the fixed-term contract, and the High Court has also concluded and found it to be so. The case put forward by the respondent before the Labour Tribunal is that, in view of several others being re-instated upon accepting gratuity, he also should have the same benefit and the **non-extension** of his employment upon the expiration of 6 months amounted

to unjust termination. It is in this backdrop that details of 6 other persons, whom the respondent claims to have been favourably treated, were led in evidence. The alleged favourable treatment is that those persons, having accepted and obtained gratuity, have subsequently been appointed on permanent basis. The said persons referred to are Ranjith Wijesiri, P. Janaki De Silva, Nimal Jayantha, Wimalasuriya, P. D. Dhanapala, and W. Perera. As far as Nimal Jayantha and W. Perera are concerned, there is no evidence of their having accepted gratuity.

15. Janaki De Silva and P. B. Dhanapala are two persons who have obtained gratuity upon the first termination of their employment but have been re-employed on a permanent basis subsequently. The fact of they obtaining gratuity is evident by letters A-13 and A-12, respectively. However, their letters of re-employment, marked A-7(2) and A-12(1), are different from A-1, that of the respondent. A-7(2) and A-12(1) are both letters of appointment on a permanent basis, upon specific requests made during the pendency of the contractual appointments made in the first instance. In contrast, A-1 is a conditional re-engagement. It is a reinstatement, subject to a proviso. The said proviso is that, if gratuity has been accepted and paid, then the employment will be on contract basis for a period of six months, in view of Circular No. 15 of 2011. The respondent in his evidence has accepted this position. The relevant portions of his evidence appear as follows:

> "ප්‍ර: කුමක්ද 2015.04 මාසයේ පත්වීම් ලබා දුන්නේ?
>
> උ: මාස 06 සඳහා කොන්ත්‍රාත් පත්වීම වශයෙන් සළකා කොන්ත්‍රාත් පදනමින් මාස 06 වැටුප දෙනවා කිව්වා. ඊට පස්සේ ස්ථීර පත්වීම් වශයෙන් පරිවර්තනය වෙනවා කිව්වා.
>
> ප්‍ර: ඒ.1 ලේඛණයේ මුලින් සඳහන් වන්නේ කුමක්ද?
>
> උ: සේවය ප්‍රතිස්ථාපනය කිරීම."
>
> (at page 86 of the brief)
>
> "ප්‍ර: (නැවත ඒ.1 පෙන්වයි) මෙම පත්වීම් දින සිට මාස 06 කාල සීමාවක් කොන්ත්‍රාත් පත්වීම වශයෙන් සළකා පත්වීම ලබා දීලාද තිබෙන්නේ?

උ: ඔව්. මාස 06 සඳහා කොන්ත්රාත් ලෙස සලකනවා. ඉදිරියේදී ස්ථීර රැකියාව වශයෙන් පරිවර්තනය වෙනවා කියා.

ප්ර: ඒ ආකාරයට වාර්තා කලාද තමන් සේවයට?

උ: ඔව්."

(at page 87 of the brief)

"ප්ර: ඒ.1 කියන ලිපිය මත කොපමණ කාලයක් ද සේවය ලබා දුන්නේ? කොහොමද ලිපියේ සඳහන් වෙන්නේ?

උ: මාස 6ක කොන්ත්රාත් පත්වීමක් සඳහා වාර්තා වුනා.

ප්ර: ඒ.1 කියන පත්වීම් ලිපිය කුමන පදනමක් මතද ලබා දුන්නේ?

උ: 2015.04.28 වෙනිදා මට පත්වීමක් ලබා දුන්නා මාස 6ක කොන්ත්රාත් පත්වීමක් වශයෙන් සලකා. සේවය ස්ථීර සේවයට පරිවර්තනය වෙන බව කිව්වා."

(at page 98 of the brief)

"ප්ර: මෙම පත්වීම ස්ථීර කරන බවට වෙන ලිපියක් ලැබුනද?

උ: නැහැ."

(at page 107 of the brief)

As evident on the face of letters A-12 and A-13, the others, having accepted contract-basis appointments, have subsequently made requests for a permanent appointment during the pendency of the contractual period. The respondent, having accepted a contractual appointment, has not made any such request within the 6-month period or thereafter.

16. As I see, the Labour Tribunal President's finding that the re-engagement was on contract basis for a period of 6 months is correct and is in accordance with the evidence. That being so, the only issue for determination in this appeal is whether the non-extension of his period of contract upon the expiration amounted to unlawful termination of his employment. According to the evidence led by witness Dhammika Kapila, called by the appellant, on document R-4, the Circular, it is apparent that re-employment or reinstatement of a person who has

accepted and paid gratuity is not permitted. The relevant evidence of this witness had been considered by the Labour Tribunal President, which appears as follows:

> "ප්‍ර: ආර් 3 ලේඛනය අනුව මෙම ඉල්ලුම්කරු පාරිතෝෂික මුදල් ලබාගෙන තියෙනවා ද?
>
> උ: ඔව්.
>
> ප්‍ර: ඉල්ලුම්කරු සේවයෙන් ඉවත් වෙලා තියෙනවා පාරිතෝෂික ලබාගෙන තියෙනවා. ඒ අනුව නැවත ස්ථිර සේවයට බැඳෙන්න පුළුවන් ද මේ ආයතනයේ?
>
> උ: මෙම ආයතනයේ ස්තීර සේවයට එන්න ඉඩ නෑ.
>
> ප්‍ර: හේතුව මොකක්ද?
>
> උ: ඉල්ලුම්කරුගේ සේවා කාලය සම්බන්ධව සියළු වගකීම් ආයතනය විසින් කර ඇති නිසා නැවත නව සේවකයෙකු ලෙස පෙර තනතුරේ ප්‍රතිශ්ඨාපනය කිරීමට ඉඩ නෑ.
>
> ආර් 4 පෙන්වා සිටි.
>
> ප්‍ර: තුන්වන පරිච්ඡේදයේ චක්‍රලේඛයක් සම්බන්ධව සඳහන් කරලා තියෙනවා?
>
> උ: ඔව්. ශ්‍රී ලංගම කොන්ත්‍රාත් සේවකයන් සඳහා වේතන ගෙවීමේ පිළිවෙත් හා උපදෙස් නිකුත් කළ අවසාන චක්‍රලේඛය 2008/අංක 6 දරණ මුදල් කොට්ඨාශ චක්‍ර ලේඛය.
>
> ප්‍ර: ඔය චක්‍රලේඛය අනුව කොන්ත්‍රාත් පදනම මත රැකියාව ලබා දීලා තියෙන්නේ කොපමණ කාලයකට ද?
>
> උ: මාස හයක කාලයක් බව ලිපියේ සඳහන්."

17. That being so, the High Court Judge, relying on the decision of ***Royal Surrey County NHS Foundation Trust v. Drzymala*** (supra), concluded that persons employed on fixed-term contracts may continue on contract basis for further periods and in certain circumstances, may become entitled to an extension of the contract or, in some instances, even for permanent monthly employment. In that context, it is necessary to comprehend and distinguish between a contract of employment for an indefinite duration for permanent employment and one for a fixed term. A permanent or regular contract of employment is one which is entered into for an unspecified duration, so to say, which generally

continues until it is lawfully terminated by either party in accordance with statutory provisions or contractual terms, i.e., reaching the specified age of retirement. Such employment, though popularly referred to as "permanent employment," are, in law, contracts of employment that automatically renew every month, unless they are terminated by either party (S. R. de Silva, Monograph No. 4, "The Contract of Employment", 2017 Revised Edition, at paragraph 180). Such employment certainly carries with it the right and an expectation of continuity, subject to termination only upon just cause or in compliance with applicable laws. In contrast, a fixed-term contract of employment is one where the duration of employment is expressly limited generally to a defined period. The significant characteristic of such a contract is that it automatically terminates upon the expiry of the stipulated term, without the necessity for any act of termination by the employer.

18. The different and distinct legal consequences of these two forms of employment are significant and relevant. In "permanent" contracts, as it automatically renews every month, the cessation of employment would ordinarily constitute "termination" or "dismissal"; however, in fixed-term contracts, as the cessation of employment occurs automatically upon the effluxion of time, there is no termination by the employer, rather, it is the natural consequence of the agreement mutually entered into between the parties. In this context, in ***British Broadcasting Corporation v. Ioannou*** [1975] 1 Q.B. 781, where the Court of Appeal of England & Wales had to interpret and apply the term "fixed term" as used in two UK statutes, Lord Denning M.R., delivering the leading judgment, opined as follows:

> *"In my opinion a "fixed term" is one which cannot be unfixed by notice. To be a "fixed term" the parties must be bound for the term stated in the agreement: and unable to determine it by notice on either side. If it were only determinable for misconduct, it would, I think, be a "fixed term"- because that is imported by the common law anyway. But determination by notice is destructive of any "fixed term".*

19. That being so, the learned High Court Judge relied on the English decision of ***Royal Surrey County NHS Foundation Trust v. Drzymala*** (supra); however, that authority is clearly distinguishable on its facts and the particular legislative context. The case was concerned not with any inherent right to renewal but with the fairness of the non-renewal of such contracts within the framework of the United Kingdom's statutory regime, under which the expiry of a fixed-term contract is deemed to constitute a dismissal and is subject to review for fairness. The Court's determination ultimately turned on procedural deficiencies and the employer's failure to act reasonably in the circumstances, rather than on any established entitlement to continued employment or renewal.

20. In contrast, the present case concerns a single fixed-term contract for a clearly defined period of six months, with no history of renewals and no course of conduct capable of giving rise to any implied expectation of continuation. Further, unlike the position in the United Kingdom, Sri Lankan law does not provide an equivalent or similar statutory framework regulating successive fixed-term contracts or conferring enhanced protections on such employees. The single contract in the present case came to an end purely by the effluxion of time, and not by way of dismissal attracting judicial scrutiny on grounds of fairness. Accordingly, the factual and legal matrix in ***Drzymala*** (supra) is materially different, and the principles arising therefrom have no application to the present case.

21. The position of Sri Lankan law on this matter has been authoritatively laid down in ***De Silva v. Associated Newspapers of Ceylon Ltd*** (1978–79) 2 SLR 173. In that case, it was held that,

> *"A 'fixed term' contract is one under which a person is employed for a fixed term without any guarantee that the contract would be renewed on the expiry of the stipulated period, the contract coming*

> *to an end by consensual termination at the end of the agreed period. Where a contract for a fixed term is not renewed, the employee would have no claim to reinstatement before a Labour Tribunal; because a claim for reinstatement can be made before a Labour Tribunal under section 31B (1) (a) of the Act only if his services are terminated by the employer. But a fixed term contract is terminated not by the employer, but by mutual agreement, on the effluxion of time"* (at page 183).

22. The above said decision also establishes that **non-renewal is not termination**. However, exceptional circumstances such as repeated renewals may give rise to an "expectation", so to say, of a renewal or extension. Yet for all, such non-extension or non-renewal will not be a termination; if at all, it is a non-employment. Justice Wimalaratne in the said case of ***De Silva v. Associated Newspapers of Ceylon Ltd*** went on to make the following observation as regards the right of such a person employed on a series of fixed-term contracts as follows:

> *"The position would have been different had the question of the non-employment of the applicant and of other District Correspondents gone before an Industrial Court or an Arbitrator. Section 48 of the Act defines an 'Industrial dispute' as meaning any dispute between an employer and a workman.....connected with the employment or non-employment.....of any person. These words appear to be wide enough to cover the case of non-renewal of a series of contracts of employment for fixed periods, if they have given rise to an implied promise or understanding that the employer would renew the contract in the absence of misconduct or inefficiency"* (at pages 183 and 184).

Accordingly, a person who had been employed on a series of fixed-term contracts will come within the meaning of "workman", and in context and circumstance, if such multiple fixed-term contracts had given rise to an implied promise or understanding of renewal, in the absence of misconduct or inefficiency, non-extension may amount to non-employment but not termination.

23. This distinction has been recognised in the jurisprudence of the Administrative Tribunal of the International Labour Organization (ILO). In ***R. G. L. v. ILO*** (Judgment No. 3448), the Tribunal held that,

> *"While a fixed-term appointment may be renewed, it shall carry no expectation of renewal or of conversion to another type of appointment..."*

The Tribunal went on to hold that,

> *"A person who is employed on a fixed-term contract* ***does not have a right or a legitimate expectation*** *to a contract extension. Accordingly, the Tribunal will not interfere with a decision not to extend such a contract unless the decision was made without authority, or in breach of a rule of procedure, or was based on a mistake of fact or of law, or overlooked some essential fact, or amounted to an abuse of authority."*

This reflects the same basic principle recognised in ***De Silva*** (supra), namely that a fixed-term contract ordinarily expires by operation of its own terms and does not, by its mere expiry, give rise to a claim of unlawful termination but may be non-employment, if at all.

24. The Administrative Tribunal of the International Labour Organization, in the later decision in ***O. v. World Health Organization*** *(WHO)* (Judgment No. 3586), reiterates that "*an employee who is in the service of an international organization on a fixed-term contract does not have a right to the renewal of the contract when it expires*". The complaint in that case succeeded not because the employee had any right to renewal, but because the employer's decision was vitiated by distinct procedural and evidentiary unfairness, including failure to disclose relevant material, breach of due process, and failure to reconsider the decision in light of subsequently available funding before the contract expired.

25. Further, I observe that a similar approach has been adopted in Malaysian jurisprudence, where the Courts have distinguished between a genuine fixed-term contract and what is, in substance, an ongoing permanent employment "disguised", so to say, in a fixed-term form. In

AW Yeong Leong Sim v. Air Products Malaysia Sdn Bhd (2025) MELRU 335, the Industrial Court of Malaysia held that the proper inquiry is first whether the contract in question is a genuine fixed-term contract and that only if it is found not to be so does the question of dismissal arise. The Court further held that even where a fixed-term contract is renewed continuously without any break, that fact by itself does not convert it into a "permanent appointment," and opined that,

> *"In respect of the Claimant's contention that since there were no gaps and breaks in the renewal of the Claimant fixed term contract and therefore it cannot be considered as a genuine fixed term contract, I am of the opinion that such a view is too simplistic since it is trite law that continuous renewal of a fixed term contract without any breaks or gaps in between cannot by itself convert a fixed term contract into a permanent one. I am of the view that there must be something more that the Claimant must show in order to prove that the fixed term contract is not a genuine fixed term contract."*

The Court emphasised that genuine fixed-term contracts remain valid where the employment is temporary, one-off, or for a specific purpose and are to be distinguished from the disguised fixed-term contracts where employment is in fact permanent and are in fact ongoing, permanent contracts of employment.

26. The sum total of the aforesaid authorities and dicta may be summarised as follows. There is a clear distinction between a fixed-term contract and that of permanent employment. In the former, at the end of the term, the contract is determined automatically by the effluxion of time, whereas in the latter, the contract is automatically renewed on a monthly basis. As for fixed-term contracts, mere repeated renewals without something more would not create an expectation of a renewal. Even where such an expectation is created with the effluxion of time, the initial contract will be determined, and there is no termination. However, the non-renewal in such circumstances would amount to non-employment, which is an industrial dispute within the purview of an

industrial court or an arbitrator, but not a matter which the Labour Tribunal will have jurisdiction.

27. Then, if a fixed-term contract is terminated before the lapse of time, that would amount to termination which the Labour Tribunal may take cognisance of. Then, reinstatement and/or back wages will, if at all, be limited and cannot exceed the balance period of the fixed-term contract. However, if a fixed-term contract is, in effect, a sham or the fixed-term label is a disguise and a cover-up for a person being engaging on a permanent basis, and if such contract of employment is not extended, it would, in law and in fact, be the termination of permanent employment. In such circumstances, the Labour Tribunal will certainly have jurisdiction to take cognisance of such termination.

28. Now, getting back to the judgment of the High Court, the learned High Court Judge has concluded that the non-extension in the circumstances amounts to unjust termination (*vide* paragraph 3 of page 11 and also paragraph 3 of page 12 of the judgment). The basis for so concluding is that others who have accepted gratuity upon termination have been re-employed on permanent basis. Having so concluded, the relief awarded by the High Court is reinstatement with back wages or, in the alternative, if the respondent has reached the age of retirement, wages and all allowances up until the date of retirement, and upon such payment, subject to the gratuity paid, he should be retired (*vide* page 13 of the judgment).

29. In the above premises and for the reasons aforestated, I find that the learned High Court Judge erred when he decided that non-extension of employment amounted to termination. Accordingly, the question of law on which leave was granted is answered in the affirmative. Accordingly, the impugned Judgment of the Provincial High Court dated 16.11.2020 is hereby set aside, and the Order dated 19.10.2018 of the Labour Tribunal is affirmed.

30. The appeal is accordingly allowed; however, we make no order as to costs.

Appeal is allowed.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT