

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

In the matter of an application for Special Leave to Appeal under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

ORIGINALLY

Bank of Ceylon,
No.4, Bank of Ceylon Mawatha,
Colombo-01.

Petitioner

SC Appeal No.175/11
S (Spl) LA App No. 215/2010
CA (WRIT) App No. 481/2005

vs.

1. Commissioner of Labour,
Department of Labour, Narahenpita,
Colombo-5.
2. W. D. John Seneviratne,
Former Minister of Labour, Ministry
of Labour,
Narahenpita, Colombo-5.
3. Athauda Seneviratne,
Minister of Labour, Ministry of
Labour, Narahenpita,
Colombo-5.
4. P. J. S. A. Perera,
No.30, Jubilee Mawatha,
Lakshapathiya, Moratuwa.
5. Z. A. A. Hussain,
No.46/2, Main Street, Kahawatta.

Respondents

AND BETWEEN

Z. A. A. Hussain,
No.46/2, Main Street, Kahawatta.

5th Respondent-Petitioner

Vs.

Bank of Ceylon,
No.4, Bank of Ceylon Mawatha,
Colombo-01.

Petitioner-Respondent

1. Commissioner of Labour,
Department of Labour, Narahenpita,
Colombo-5.
2. W.D. John Seneviratne,
Former Minister of Labour, Ministry
of Labour,
Narahenpita, Colombo-5.
3. Athauda Seneviratne,
Minister of Labour, Ministry of
Labour, Narahenpita,
Colombo-5.
4. P.J.S.A.Perera,
No.30, Jubilee Mawatha,
Lakshapathiya, Moratuwa.

1st to 4th Respondent-Respondents

AND NOW BETWEEN

**In the matter of an application for substitution
in terms of rule 38 of the Supreme Court Rules**

Z. A. A. Hussain,
No.46/2, Main Street, Kahawatta.

5th Respondent – Appellant
(Now deceased)

Noor Jahan Ameen Hussain, No.291/1,
Colombo Road, Weralupe,
Rathnapura.

Substituted 5th Respondent-Appellant

Vs

Bank of Ceylon,
No.4, Bank of Ceylon Mawatha,
Colombo-01.

Petitioner-Respondent

1. Commissioner of Labour,
Department of Labour, Narahenpita,
Colombo-5.
2. W. D. John Seneviratne,
Former Minister of Labour, Ministry
of Labour,
Narahenpita, Colombo-5.
3. Athauda Seneviratne,
Minister of Labour, Ministry of
Labour, Narahenpita,
Colombo-5.
4. P. J. S. A. Perera,

No.30, Jubilee Mawatha,
Lakshapathiya, Moratuwa.

1st to 4th
Respondents-Respondents

Before : Janak De Silva, J.
Mahinda Samayawardhena, J.
Menaka Wijesundera, J.

Counsel : Faisz Mustapha, PC, with Hussain Ahamed, Thushani Machado and Ms. Ayendri De Silva instructed by Ms. T. K. Jelil for the 5th Respondent- Petitioner
Max Bastiyan with Chandimal Mendis instructed by Shantha Horandugoda for the Petitioner-Respondent.
Ms. Sabrina Ahmed, SSC, for the 1st Respondent- Respondent.

Written

Submissions : Latest written submissions on behalf of the Petitioner-Respondent on 9th July, 2025.
Latest written submissions on behalf of the 5th Respondent-Appellant on 9th July, 2025
Latest written submissions on behalf of the Respondent-Respondent on 27th October, 2023.

Argued on : 20.06.2025

Decided on : 04.09.2025

MENAKA WIJESUNDERA J.

The instant appeal has been originally filed to set aside the judgment dated 30th of September, 2010 of the Court of Appeal in the Writ application 481-2005.

This matter had been listed in the peremptory list by Her Ladyship, the Chief Justice, for the reason that it had been twice argued, fixed for judgment and has not been delivered.

In the instant matter, the appellant, namely Z. A. A. Hussain, had passed away and his widow, namely Noor Jahan Ameen Hussain, has been substituted in place of the deceased with the leave of this Court.

The deceased-appellant (hereinafter referred to as the appellant) had joined the respondent bank (hereinafter referred to as the bank) in the year 1972, in the capacity of a clerical person and thereafter, had obtained a bachelor's degree and professional qualifications, including his entrance to the Bar.

At the outset of the appellant obtaining further academic qualifications, he had functioned as the manager of the Ratnapura branch of the respondent bank.

With the upgrading of the said branch, he had been appointed as Chief Manager.

Thereafter, he had been transferred to the Economic Research division of the bank on 20.01.1992 but on the request of the appellant, the said transfer had been postponed to one year and thereafter, after the one year had lapsed, he had been transferred to the Cey Bank Travel Center to which also he had made an appeal to the higher authorities for a cancellation on the basis of bad health.

But the bank had not obliged him but had retransferred him on the 8th of March, 1993 again because there had been allegations of going against the management by the appellant, which had resulted in serious acts of fraud and irregularities.

Thereafter, the appellant had asked for an early retirement by letter dated 19.07.1995 (A63), but it had not been granted and the appellant had resigned from his post subject to his pension rights (A65). He had been paid EPF, ETF and gratuity.

But as his pension had not been paid as anticipated by the appellant, he had lodged an appeal in the Labor Commissioner by his letter dated 30.11.1995. (A73)

As the matter had not been resolved at the Labor Commissioner, the Minister had referred the matter to an arbitrator to decide whether the appellant should be granted pension rights for his services to the bank for the period of 11.09.1972 to 19.07.1995.

The arbitrator, the 4th respondent, had held upon an inquiry that the appellant was entitled for full pension rights from 1995, inclusive of all arrears, which should be deposited with the Labor Commissioner and had proceeded to gazette the said award.

The respondent bank being aggrieved by the said order had filed a writ application in the Court of Appeal asking to quash the said award.

The Court of Appeal had set aside the said award on the basis that it was not just and equitable.

Hence, the current appeal has been lodged against the said judgment and leave had been granted by this Court on the following questions of law,

1. Did the Court of Appeal err in law, in failing to appreciate that in terms of Section 17(1) of the Industrial Disputes Act, the Arbitrator is required to make "such award as may appear to him just and equitable" and that the 4th Respondent-Respondent Arbitrator had correctly held that the 5th Respondent-Petitioners' claim to a pension was "justified and consequently the award was within the jurisdiction conferred upon the said Arbitrator"?
2. Did the Court of Appeal misdirect itself in failing to consider that the Arbitrator is required to make a "just and equitable order" and that his jurisdiction is untrammelled by the Rules and Regulations of the Pension Fund?
3. Did the Court of Appeal fail to appreciate that the Management of the Petitioner-Respondent Bank had acted unfairly by failing to place the 5th Respondent-Petitioner's claim before the Board of Directors which had exercised its discretion in favour of the workman in the instances cited by the Petitioner-Respondent Bank?
4. Did the Court of Appeal misdirect itself in the application of Rule 5 of the Rules and Regulations of the Pension Fund to the facts and circumstances of the instant case?

Hence, upon perusal of the above-mentioned facts, it is my opinion that right now, what has to be decided is, whether the arbitrator was empowered by law

to make such an award and whether the Court of Appeal erred in law in quashing the same.

To adjudicate the above, it is my opinion that the powers of the arbitrator should be considered in view of Section 17 (1) of the Industrial Disputes Act 1950.

Under Section 17(1) of the Industrial Disputes Act, the arbitrator is empowered to resolve disputes when it has been referred to him or her under section 3(1) and section 4(1) of the relevant act.

But in the instant matter, the arbitrator has to consider the evidence led before him in view of the Bank of Ceylon Pension scheme 1988, which has clearly stipulated the grounds on which pensions can be awarded to employees, which is as follows,

Rule 3 stipulates grounds on which workmen are entitled to retire with pension, they are,

- 1) on reaching the age of 55,
- 2) on medical grounds but subject to rule 4
- 3) on disciplinary grounds but it has to be subject to rule 5 (Rule 5 - the board of directors in its absolute discretion may decide to retire an employee on disciplinary grounds as a merciful alternative to dismissal provided such employee has been in the service of the bank for a period of not less than 15 years).
- 4) on grounds of inefficiency.

The arbitrator held that the appellant had a contractual entitlement for a pension in terms of rule 5 of the above-mentioned scheme and has made the award.

But the Court of Appeal has held that there was clear evidence that the appellant did not retire but resigned from the service.

Hence, then the question is whether the learned Court of Appeal judge was correct in setting aside the award of the arbitrator.

In light of the above-mentioned material, it is quite clear that the appellant, before reaching the age of 55 years, had resigned from the bank and the bank had accepted the same. Therefore, if the pension scheme of the bank is to be applied, he must at first reach the age of 55 years or has to be qualified for the grounds stipulated above to retire before the age of 55 years.

The appellant, after not adhering to the decision of the bank regarding his transfer, had submitted medical certificates to show that he was not in the best of health and the bank had appointed a medical board and the board had declared that he was fit to work.

As he had not reported to work, the disciplinary inquiry had begun and he had been cautioned by the committee.

Therefore, the appellant does not fall in to the category who is fit to retire on medical grounds or who had been found guilty upon a disciplinary inquiry.

It is my opinion that the board of directors of the bank cannot use their discretion in accepting the retirement of the appellant under rule 5 of the scheme.

Therefore, I am of the opinion that the Court of Appeal has not erred when it has decided to quash the award of the arbitrator in view of the above-mentioned facts. Hence, I answer the questions of law raised by the appellant in the negative and dismiss the instant appeal and affirm the judgment of the Court of Appeal.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT