

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

In the matter of an Appeal under Section 31DD of the Industrial Disputes Act No.43 of 1950 read with Section 9 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

T.V. Dharamakeerthi,
No. 310/4,
Enderamulla
Wattala.

Applicant

Vs.

1. M.R. Jansz
No. 5/2, Crocktain Road,
Hekitta,
Wattala.

2. Globe Elite (Pvt) Ltd
No.93/G/24,
1st Cross Street,
Colombo-11.

SC Appeal No: 225/2017

SC/SPL/LA No: 99/2017

H.C. Case No: HC/ALT/77/2014

L.T. Case No: 2/Add/3594/2012

Respondents

AND BETWEEN

T.V. Dharamakeerthi,
No. 310/4,
Enderamulla
Wattala.

Applicant- Appellant

Vs.

1. M.R. Jansz
No. 5/2, Crocktain Road,
Hekitta,
Wattala.
2. Globe Elite (Pvt) Ltd
No.93/G/24,
1st Cross Street,
Colombo-11.

Respondents- Respondents

AND NOW BETWEEN

1. M.R. Jansz
No. 5/2, Crocktain Road,
Hekitta,
Wattala.
2. Globe Elite (Pvt) Ltd
No.93/G/24,
1st Cross Street,
Colombo-11.

**Respondents- Respondents-
Appellants**

Vs.

T.V. Dharamakeerthi,
No. 310/4,
Enderamulla
Wattala.

**Applicant- Appellant-
Respondent**

BEFORE:

**Hon. Yasantha Kodagoda PC, J.
Hon. K. Kumudini Wickremasinghe, J.
Hon. A.L. Shiran Gooneratne, J.**

COUNSEL: Dhananjaya Jayakody instructed by A.G. Ranjith Perera for the Respondents-Respondents-Appellants.

S.H.A. Mohamed with Pramod Polpitiya instructed by Sachintha Rodrigo for the Applicant-Appellant-Respondent.

WRITTEN SUBMISSIONS: By the Respondents-Respondents-Appellants on 27.08.2019, 13.02.2025 and 24.10.2025.

By the Applicant-Appellant-Respondent on 18.08.2025.

ARGUED ON: 02.09.2025

DECIDED ON: 17.03.2026

K. KUMUDINI WICKREMASINGHE, J.

This is an appeal from an Order of the High Court of the Western Province, dated 22.03.2017 which set aside the Order of the Labour Tribunal of Bataramulla bearing No: 2/ADD/3594/2012, dated 18.08.2014 and ordered a retrial of the same.

The Applicant-Appellant-Respondent (hereinafter referred to as the “Respondent”) instituted the initial action before the Labour Tribunal of Bataramulla against the Respondents-Respondents-Appellants (hereinafter referred to as the “Appellants”) by application dated 05.10.2012, alleging that his services had been constructively terminated by the Appellants on or about 27.04.2012. He sought reinstatement with back wages or, in the alternative, compensation in the sum of Rs. 3,000,000/-. The Appellants denied that the Respondent had been employed in the capacity of a Manager and maintained that he functioned solely as the personal driver of the 1st Appellant. They further maintained that the Respondent had voluntarily vacated his employment on 20.12.2011 after indicating his intention to pursue his own business interests, and that he had been paid his salary together with a sum

of Rs. 75,000/- as a Christmas bonus on that date. A preliminary objection was raised that, if the cessation of employment occurred on 20.12.2011, the application filed in October 2012 was prescribed in terms of section 31B(7) of the Industrial Disputes Act. The central controversy before the Tribunal therefore concerned whether there had been a termination by the employer, and, if so, the operative date thereof.

At the inquiry, the Respondent testified and closed his case without calling additional witnesses. The Appellants elected not to lead oral evidence but relied on matters elicited in cross-examination and on documentary material, including a letter marked R1 bearing the Respondent's signature. That letter, received by the office of the then Secretary of Defence on 30.03.2012, referred to the cessation of employment in December 2011. Upon evaluation of the totality of the material, the learned President of the Labour Tribunal concluded that the Respondent had failed to establish constructive termination on 27.04.2012 and that the more probable date of cessation of employment was 20.12.2011. The application was accordingly dismissed on the basis of prescription.

The Respondent preferred an appeal to the High Court, impugning, *inter alia*, the evaluation of evidence and the reliance placed on document R1. By order dated 22.03.2017, the learned High Court Judge held that the Tribunal's approach in determining the date of termination, without the Appellants leading substantive evidence, warranted interference, and directed that the matter be remitted for retrial. Aggrieved by that order of remittal, the Appellants have invoked the appellate jurisdiction of this Court.

This Court by Order dated 16.11.2017 granted Leave to Appeal on the question of law stated in paragraph 11 (f) of the Petition dated 27.04.2017 as set out below.

1. The Learned High Court Judge of the Western Province High Court Holden Colombo has failed to consider the admitted facts by the Respondents by "R-1" in relation to the termination of services which

has been categorically mentioned that the date should be as 22.12.2011 and ignored by the said order which is contrary to law and bad in law.

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

The matter for consideration by this court is namely, **“The Learned High Court Judge of the Western Province High Court Holden Colombo has failed to consider the admitted facts by the Respondents by “R-1” in relation to the termination of services which has been categorically mentioned that the date should be as 22.12.2011 and ignored by the said order which is contrary to law and bad in law.”**

It was the Appellants' contention that the Learned High Court Judge had mischaracterised the evidentiary value of R1 and the admissions elicited during cross-examination. Their stance was that R1, admittedly authored under the Respondent's instruction and signed by him, constituted primary documentary evidence within the meaning of section 3 of the Evidence Ordinance and was lawfully introduced during cross-examination.

They emphasised that the Respondent had acknowledged both the authorship and the contents of the letter and had conceded that it was written prior to 30.03.2012. In that letter, reference was made to cessation of employment in December 2011. The Appellants contended that this admission materially undermined the Respondent's pleaded position that termination occurred on 27.04.2012 and created an internal inconsistency fatal to his claim. They further argued that proceedings before the Labour Tribunal, though not strictly adversarial, nevertheless required the party invoking jurisdiction under section 31B of the Industrial Disputes Act to establish both the fact of termination by the employer and compliance with the six-month limitation.

In their submission, once R1 and the oral answers given in cross-examination were weighed on a balance of probability, the Learned President of the Labour Tribunal was entitled to conclude that the most probable date of cessation

was 20.12.2011, or at the latest a date prior to 30.03.2012, thereby rendering the application filed on 05.10.2012 prescribed. They contended that the High Court had erred in holding that there was no “substantive evidence,” as cross-examination is a recognised mode of adducing proof, and that the quality, not the quantity, of evidence was determinative.

Reliance was placed, inter alia, on ***KDM Gunasekara v Attorney General [1977] NLR 384*** to demonstrate that evidence favourable to the cross-examining party may properly emerge through that process, and on ***Ceylon Cinema and Film Studio Employees Union v Liberty Cinema Ltd [1994] 2 SLR 185*** to contend that an appellate court may not disturb findings of fact unless unsupported by legal evidence or perverse. On that footing, the Appellants maintained that the High Court had impermissibly substituted its view for that of the Tribunal and that the order directing a retrial was contrary to law.

The Respondent, in answer, adopted the stance that the High Court had correctly identified a fundamental evidentiary deficiency in the Tribunal’s reasoning. It was contended that R1 was undated, that it did not refer to resignation on 20.12.2011 as pleaded in the Appellants’ answer, and that it was inconsistent with the Appellants’ own case that there had been no termination but only voluntary resignation.

The Respondent maintained that during cross-examination he had expressly denied the suggestion that he finally worked on 20.12.2011 and had consistently asserted that he continued to report for work until 27.04.2012, as reflected in the exchange: “ප්‍ර: ඒ අනුව තමාට යෝජනා කරනවා තමා අවසාන වශයෙන් මේ වග උත්තරකාර ආයතනයේ වැඩ කලේ 2011.12.20 වෙනිදා කියලා? උ: එය වැරදියි.” In that context, it was contended that the mere production of R1, without the Appellants leading affirmative evidence to substantiate their pleaded version of voluntary resignation, could not amount to conclusive proof of cessation on 22.12.2011.

The Respondent further argued that section 31C(1) of the Industrial Disputes Act imposed a statutory duty upon the Labour Tribunal to conduct a full

inquiry and hear all evidence necessary to reach a just and equitable determination, a principle underscored in ***David Michael Joachim v Aitken Spence Travels Ltd SC APPEAL 09/2010 decided on 11.02.2021*** and ***Ceylon Transport Board v Gunasinghe [1968] 72 NLR 76***. Given the internal contradictions between R1 and the Appellants' pleadings, and the absence of *viva voce* evidence from the Appellants, the Respondent contended that the Labour Tribunal could not logically determine the precise nature or date of cessation. Accordingly, the High Court's conclusion that there was no substantive evidence to sustain the Tribunal's finding was, in the Respondent's view, a correct application of appellate principle rather than an impermissible re-evaluation of facts, and the direction for a re-inquiry was said to be legally justified.

In considering the applicable law, **Section 31B(1)** of the **Industrial Disputes Act No. 43 of 1950** confers jurisdiction on the Labour Tribunal where "*the termination of his services by his employer.*" **Section 31B(7)** of **Industrial Disputes Act No. 43 of 1950** mandates that such application must be made within six months of the date of termination. The limitation contained therein is not merely procedural; it is jurisdictional in character.

Where an application is instituted outside the prescribed period, the Tribunal is divested of authority to embark upon an inquiry into the merits, however sympathetic the factual matrix may appear. Jurisdiction cannot be conferred by acquiescence, nor can it be assumed in the absence of a foundational jurisdictional fact. The date of termination is therefore not a peripheral matter but a threshold determinant upon which the competence of the Tribunal rests. The statutory framework thus reflects a deliberate legislative design: the Labour Tribunal may exercise its remedial and equitable jurisdiction only where the applicant establishes, at the threshold, that the complaint has been brought within the period contemplated by the statute. Where that jurisdictional fact is not established, the Tribunal is precluded from proceeding further, irrespective of the substantive grievances raised by the applicant.

Section 31C(1) of the **Industrial Disputes Act No. 43 of 1950** imposes a duty upon the Tribunal:

“Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal in to make all such inquiries into that application and hear all such evidence as the tribunal may consider necessary and thereafter make, not later than six months from the date of such application, such order as may appear to the tribunal to be just and equitable.”

The statutory language makes clear that the Tribunal’s task is inquisitorial in orientation; yet that inquisitorial duty does not obviate the requirement that findings must rest upon legally admissible evidence. The Tribunal is not at liberty to act upon conjecture, nor is it empowered to disregard admissions properly proved. Its duty to inquire is complementary to, not destructive of, the evidentiary burden borne by the applicant. The Tribunal’s responsibility to act “justly and equitably” must therefore be understood as operating within the confines of the evidentiary record and the statutory framework that governs its jurisdiction.

In parallel, **section 101** of the **Evidence Ordinance No. 14 of 1895** provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

Further, **section 106** of **Evidence Ordinance No. 14 of 1895** stipulates that:

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

The date and nature of cessation of employment are facts peculiarly within the knowledge of the employee who asserts wrongful termination. Therefore, the initial evidentiary burden rested squarely upon the Respondent. It was

therefore incumbent upon the Respondent to establish, on a balance of probability, that his services were terminated on 27.04.2012 as pleaded. Absent such proof, the Tribunal was not competent to assume jurisdiction. The statutory allocation of burden is not a mere procedural formality; it is integral to the adjudicative process. Where the applicant fails to establish the jurisdictional fact upon which the Tribunal's authority depends, the Tribunal is left with no option but to decline jurisdiction.

It is a settled principle that an appellate court may not interfere with findings of fact unless such findings are unsupported by evidence or are perverse.

In ***Caledonian Estates Ltd v Hillman* [1977] 79(1) NLR 421** this Court observed:

“That inasmuch as an appeal lies from an Order of a Labour Tribunal only on a question of law an appellant who seeks to have a determination of facts by the Tribunal set aside, must satisfy the Appellate Court that there was no legal evidence to support the conclusion of facts reached by the Tribunal, or that the finding is not rationally possible and is perverse even with regard to the evidence on record.”

That formulation encapsulates the discipline imposed upon appellate review. The court does not ask whether it would have reached a different conclusion; it asks whether the conclusion reached was one open to the tribunal on the evidence. The distinction between a finding unsupported by evidence and a finding that merely admits of competing interpretations is fundamental. Only the former justifies appellate interference.

Similarly, in ***Onnassi v Vergottis* [1968] 2 Lloyds' R.403**, it was held:

“One thing is clear, not so much as a rule of law but rather as a working rule of common sense. A trial judge has, except on rare occasions, a very great advantage over an appellate court; evidence of a witness heard and seen has a very great advantage over a

transcript of that evidence; and a court of appeal should never interfere unless it is satisfied both that the judgment ought not to stand and that the divergence of view between the trial judge and the court of appeal has not been occasioned by any demeanor of the witnesses or truer atmosphere of the trial (which may have eluded the appellate court) or by any other of those advantages which the trial judge possesses.”

Though articulated in a different jurisdictional context, the principle is of universal application: primary fact-finding attracts deference unless vitiated by legal error.

The High Court’s reasoning in the present matter proceeded on the footing that there was “no substantive evidence.” That conclusion must therefore be tested against the record in its entirety.

The document marked R1, admittedly authored under the Respondent’s instruction and signed by him, contained a reference to cessation of employment in December 2011. It bore an official date stamp of 30.03.2012. During cross-examination, the Respondent acknowledged authorship and conceded that the letter had been written prior to that date. Although the document itself was undated, its internal content unmistakably referred to an occurrence that had already taken place, namely the cessation of employment in December 2011. When read together with the official stamp confirming its receipt on 30.03.2012, the inevitable inference is that the document must necessarily have been authored sometime prior to that date and in reference to an event that had already occurred. The temporal sequence embedded within the document itself therefore reinforces the conclusion that the cessation of employment preceded the date asserted by the Respondent in his pleadings.

Section 17 of the **Evidence Ordinance No. 14 of 1895** defines an admission as:

“An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.”

Section 21 of the **Evidence Ordinance** renders admissions relevant and admissible against the maker.

The evidentiary weight of admissions has been repeatedly affirmed. The evidentiary force of an admission does not diminish merely because it emerges during cross-examination. On the contrary, cross-examination is a recognised mode of proof.

The Indian Supreme Court in ***Nagindas Ramdas v Dalpatram Ichharam*** [1974] 1 SCC 242 stated:

“Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under s. 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties.”

Likewise, in ***Bharat Singh v Bhagirathi*** [1966] 1 SCR 606, the Court held:

“Admissions are substantive evidence by themselves in view of Sections 17 and 21 of the Evidence Act.”

These principles, though articulated under the Indian Evidence Act from a cognate jurisdiction, are directly analogous to our own statutory scheme, given the shared lineage of evidentiary doctrine. It articulates evidentiary principles mirrored in our own statutory framework. An admission does not lose its character because it is elicited in cross-examination; once proved and

marked, it forms part of the evidentiary corpus and may properly ground a finding of fact.

The High Court's characterisation of R1 as lacking substantive value appears inconsistent with these foundational principles. Once admitted and marked, R1 formed part of the evidentiary corpus. Its probative weight was a matter for the Tribunal. Significantly, no material evidence was placed before the Tribunal to displace, contradict, or discredit the contents of R1. The Respondent did not produce any documentary proof demonstrating continued employment beyond December 2011, nor did he call independent witnesses capable of corroborating his assertion that he continued in service until April 2012. In the absence of such countervailing material, the Tribunal was entitled to attribute considerable probative weight to R1, particularly when read together with the Respondent's own admissions in cross-examination.

Proceedings before the Labour Tribunal are determined on a balance of probability. Per Lord Radcliffe in ***Edwards v Bairstow* [1965] 3 All ER 48,57**.

“Thus in order to set aside a determination of facts by the Tribunal limited as this Court is only to setting aside a determination which is erroneous in law, the Appellant must satisfy this court that there was no legal evidence to support the conclusion of facts reached by the Tribunal or that the finding is not rationally possible and is perverse having regard to the evidence on record. Hence a heavy burden rested on the Appellant when he invited this Court to intervene and reverse the conclusion of facts arrived at by the Tribunal.”

The Tribunal had before it:

1. The Respondent's pleading of termination on 27.04.2012;
2. The absence of corroborative evidence of work performed after December 2011;
3. Admission of receipt of final salary and bonus on 20.12.2011;
4. Document R1 placing cessation in December 2011;
5. The official stamp confirming receipt of that document by 30.03.2012.

Even accepting the Respondent's contention that R1 did not explicitly mention "resignation," it unmistakably contradicted the pleaded date of 27.04.2012. That contradiction bore directly upon credibility and probability.

In ***James Silva v The Republic of Sri Lanka* [1980] 2 SLR 167**, this court observed:

"A satisfactory way to arrive at a verdict of guilt or innocence is to consider all the matters adduced before the Court whether by the prosecution or by the defence in its totality without compartmentalizing and asking himself, whether as a prudent man, in the circumstances of the particular case, he believed the accused guilty of the charge or not guilty."

The Learned President of the Labour Tribunal engaged precisely in that evaluative exercise. He did not isolate R1; he weighed it against oral testimony and surrounding circumstances.

The Learned President of the Labour Tribunal did not rely upon R1 in isolation. He considered the payment of final salary and Christmas allowance in December 2011, the absence of cogent proof of continued employment thereafter, and the internal inconsistency between the pleaded date of 27.04.2012 and the documentary admission placing cessation in December 2011. The Tribunal was entitled, on a balance of probability, to draw reasonable inferences from that totality of circumstances. The Respondent's contention that section 31C(1) required the Tribunal to call further evidence in the face of contradiction cannot be accepted as a matter of law. The inquisitorial function empowers the Tribunal to clarify uncertainties; it does not compel it to disregard admissions already before it or to reopen proceedings where the applicant has failed to discharge the initial burden of establishing jurisdictional facts.

The High Court, in concluding that there was no substantive evidence, appears to have re-evaluated the probative weight of R1 and the Respondent's admissions. Such an approach transgresses the settled boundaries of

appellate review. The finding of the Tribunal was not perverse, nor was it unsupported by evidence; at its highest, it was a plausible conclusion drawn from admissible material. In these circumstances, the interference of the High Court cannot be sustained.

Proceedings before the Labour Tribunal are determined on a balance of probability. As articulated by Lord Radcliffe in *Edwards v Bairstow (supra)*, an appellate court limited to questions of law may only interfere where there is no evidence to support the finding or where the finding is perverse. Applying that standard, it cannot be said that the Tribunal's conclusion was irrational or unsupported. At its highest, the Respondent's argument establishes that an alternative inference might have been drawn. That is insufficient to warrant appellate displacement.

The contention that section 31C(1) obliged the Tribunal to call additional evidence overlooks the structure of the burden of proof. The inquisitorial power to call evidence is discretionary and facilitative; it does not relieve the applicant of the obligation to establish jurisdictional facts. To hold otherwise would invert the statutory burden and require the Tribunal to construct a case where the party bearing the burden has failed to substantiate it.

When the evidentiary matrix is viewed in its entirety, the Tribunal's determination that cessation occurred in December 2011 was a conclusion rationally open on the material before it. The application filed on 05.10.2012 was therefore instituted beyond the six-month period prescribed by section 31B(7), depriving the Tribunal of jurisdiction. The High Court, in re-evaluating the probative force of R1 and characterising the record as devoid of substantive evidence, transgressed the limits imposed upon appellate intervention. The finding was not perverse; it was supported by admissions and surrounding circumstances of probative value. In these circumstances, the interference of the High Court cannot be sustained in law.

Having considered the Respondent's submissions with due care, and having examined the statutory provisions and authorities governing jurisdiction, burden of proof, admissions, and appellate restraint, I am satisfied that the

Appellants' position is well-founded. The determination of prescription was grounded upon legally admissible evidence, properly assessed on a balance of probability.

The appeal must accordingly succeed. The question of law on which leave has been granted is answered in the affirmative.

The order of the High Court is set aside, and the determination of the Learned President of the Labour Tribunal dismissing the application on the ground of prescription is hereby affirmed.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda PC, J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT