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

In the matter of an application under and in terms of section 31 DD of the Industrial Disputes Act (as amended) read with section 9 of the High Court of the Provinces Special Provisions Act No. 19 of 1990 for Special Leave to Appeal

1. SC/APPEAL/59/2022
SC/HC/LA 18/2021
HC/Homagama/ALT 14/2018
HC Case No: HCALT/28/2018
LT Case No: LT/30/1560/2013

AND NOW BETWEEN

1. Kasthuri Arachchiage Pathmasiri,
No.252, Selavimala Mawatha,
Oruwala, Athurugiriya.

2. SC/APPEAL/60/2022
SC/HC/LA 19/2021
HC/Homagama/ALT 15/2018
LT Case No: LT/30/1560/2013
HC Case No: ALT/29/2018

2. Mariyagalla Kankanamalage
Chithrananda,
No. 168, Naakadamulla
Dedimamuwa.

3. SC/APPEAL/61/2022
SC/HC/LA 20/2021
HC/Homagama/ALT 16/2018
HC Case No: ALT/30/2018
LT Case No: 30/1561/2013

3. Kandabadage Sunil Wijenayaka,
No. 209B, Gorokgahadegala, Kommala,
Bentota.

Applicant-Appellant-Appellant

Vs.

Ceylon Steel Corporation Limited,
Oruwala,
Athurugiriya.

Respondent- Respondent-Respondent

Before : Yasantha Kodagoda, PC, J.
K. Priyantha Fernando, J.
Menaka Wijesundera, J.

Counsel : Kamal Dissanayake with Ms. Sajani Ranasinghe instructed by Ms. Sureni Amarasinghe for the Respondent-Appellant-Appellant.
Chathura Galhena with Dharani Weerasinghe instructed by Gamini Senarath for the Applicant-Respondent-Respondent.

Written Submissions : Written submissions on behalf of the Applicant-Appellant-Appellant on 27th September, 2022.
Written submissions on behalf of the Respondent-Respondent-Respondent on 12th October, 2022.
Further written submissions on behalf of the Respondent-Respondent-Respondent on 8th July, 2025.

Argued on : 21.05.2025

Decided on : 19.12.2025

MENAKA WIJESUNDERA J.

The appeals in the instant matters have been filed by the Ceylon Steel Corporation and the three workmen mentioned below and at the argument stage,

it was agreed between the parties that one judgement would be sufficient for all six appeals. However, I have separated the six cases into two categories, in view of the two groups of appellants but the text in both is the same.

In the matters mentioned below, the appellant is the Ceylon Steel Corporation and the workmen respondents are as follows;

1) Kandabadage Sunil Wijenayaka - SC Appeal 56/2022
2) K. A. Pathmasiri - SC Appeal 57/2022
3) M. K. Chithrananda - SC Appeal 58/2022

The Labor Tribunal had held with the above-named Workmen and the Ceylon Steel Corporation, being aggrieved, had appealed to the High Court and it has held with the workmen as well. Hence, the above numbered appeals to this Court have been filed.

At the same time, the above-named Workmen had filed cross appeals against the Ceylon Steel Corporation, asking for the dismissal of the above-mentioned appeals to this Court and the reliefs granted to the workmen to be amended and they are as follows,

4) Kandabadage Sunil Wijenayaka - SC Appeal 61/2022
5) K. A. Pathmasiri - SC Appeal 59/2022
6) M. K. Chithrananda - SC Appeal 60/2022

All six of the abovementioned appeals have been filed to set aside the judgement dated 15.02.2021 of the High Court of Homagama.

The merits of all the above-mentioned appeals would be considered together as it revolves around the same facts.

The above-named Workmen, hereinafter referred to as “the Workmen” had initially joined the Ceylon Steel Corporation, hereinafter referred to as “the Corporation”, as probation workers and had been made permanent in due course. At the time of joining the Corporation, they had believed that they could work up to the age of 60 years but with the change in management, in the year 1996, they had been made to retire at the age of 55 years, which they have thought to be unjust and arbitrary. As such, they had petitioned the Labour Tribunal asking for reinstatement with back wages or if not compensation from the Corporation.

The facts pertaining to each above-named Workmen are as follows,

The first workman, namely **Sunil Wijenayaka,** had joined the Corporation on 04.07.1978 as a probation worker hoping to work till the age of 60 years. He had been made permanent on 21.11.1984, by the letter marked as A1. On 01.03.2013, the above-named workman had completed 55 years and as he had to retire, he had asked for an extension till the age of 60 but the Corporation had by letter dated 18.02.2013, informed that he should retire at the age of 55.

The second workman, namely **K. A. Pathmasiri,** had joined the Corporation on 01.02.1983 as an unskilled worker. On 09.02.2013, he had completed 55 years and according to him, the Corporation had made him retire depriving him from working till the age of 60 years. He had requested the management to grant him an extension but by letter dated 04.01.2013, he had been told to retire, which he had pleaded to be unjust and arbitrary.

The third workman, namely **M. K. Chithrananda,** had joined the Corporation on 01.02.1983 as an unskilled worker and on 18.04.2013, he had completed 55 years and the Corporation had made him retire by letter, dated 04.01.2013, depriving him from working till the age of 60 years.

In 1993, the Corporation had been incorporated as Lanka Steel Corporation and most of the shares had been owned by the treasury. As such, major changes in the workman conditions had not taken place.

However, in the year 1996, the Corporation had been privatized and major shares had been held by the private sector and the Workmen had been given new letters of appointment and were absorbed into the workforce of the new company. However, at the same time, the voluntary retirement option also had been given but none of the workers pertaining to the matter in hand had opted for the same.

With the privatization of the Corporation, the retirement rules also had changed and the retirement procedure had taken a new turn, where it has been decided that those who had joined before the year 1975 would retire at the age of 60 years and those who joined after 1975 would retire at the age of 55 years.

As the Workmen had fallen into the second category, they had been told to retire at the age of 55 but they allege that some of the workers who were in their capacity were still working. However, this is denied by the Corporation.

It has been agreed that the conditions of service, rights, privileges and welfare of the employees, who have been transferred to the new Corporation, will be maintained as they were and will continue to be employed. (A-6 and A-6B)

The Corporation refers to circulars 95 and 263 and state that the discretion to extend the services of the employees beyond the age of 55 years lies with the

Minister upon a request made by the respective employees and that automatic renewal does not take place. (circular 95 (A-17))

With the latest incorporation, circular 95 has been repealed and the circular 135 (A7) has been brought in, with the power to consider the extensions being given to the secretary to the line ministry up to the age of 58 years and from 55 years to be extended up to the age of 60 years and has to be done with the cabinet approval.

Therefore, in the new administration there was a system in place to ask for extensions of work but the discretion lies with the employer and the employee has to make a request.

In the instant matter, the Workmen had requested to be given an extension of service but they allege that it has been ignored and they had been told to retire, while some have been retained in service.

But the Corporation states that it was due to the exigence of the services involved and that circular 135 does not give a right for the Workmen to request for extensions and that the deciding authorities are not obligated to consider the same.

But the High Court and the Labour Tribunal have held that since the system gives a right for the employee to ask for an extension, the duty to consider has been vested with the employer. But the employer must consider the same without choosing to ignore the same.

In the above context, when this matter was argued for granting of leave, this Court has granted leave to proceed on the following questions of law,

1) In the circumstances relevant to these matters, was the decision to terminate employment valid in law and just?
2) In the circumstances of these matters, was the computation of the remaining period of employment and the ensuing award of compensation payable in respect of such period of employment lawful and just?

This Court at this point draws its attention to the case law of **Jamis Appuhamy vs Shanmugam (1978) vol 80 NLR 298**, in which *Sharvananda, J*, has quoted at page 301, Lord Thankerton in **Short vs J.E.W Henderson ltd,** who has discussed the essential attributes of a contract of service which were stated as,

> *"(a) the master's power of selection of his servant, (b) the payment of wages or other renumeration, (c) the masters right to control the method of doing the work, and (d) the masters right to suspension".*

Lord Thankerton had gone on to state that,

> *"Modern industrial conditions have so much affected the freedom of the master in cases which no one could reasonably suggest that the employee was thereby converted into an independent contractor that, if and when appropriate cases arose, it will be incumbent on this House to reconsider and restate the indicia …The statement… that selection, payment and control are inevitable in every contract of service is clearly open to reconsideration."*

Therefore, there is a discretion vested in the employer to consider the continuance of service beyond the stipulated date of retirement but upon the consideration of the request for an extension, which makes it very clear that a request for an extension cannot be ignored.

According to the above quoted case law, the discretion may lie with the employer but it cannot be done arbitrarily and the employer cannot totally ignore the request for an extension. At the very least, it should be considered and the worker should be informed that it was considered but rejected because once the management had put in place a system for extension of services and when the Workmen are given the choice to request, it is the legitimate expectation of any workman to apply and then await a reply. Hence, replying before implementing is in my opinion arbitrary especially when previous conduct of the employer has been different.

At this juncture, I wish to quote a judgment quoted by the Corporation that is **Sirimal and others vs Board of Directors of the Corporative (2003) 2 SLR 23** by Weerasuriya, J, that,

> *"Legitimate expectations can arise in situations where a public body has set out criteria for application of policy in a certain area and where an applicant has relied on this criterion and the public body seeks to apply a different criteria. A previous pattern of conduct too can give rise to a legitimate expectation."*

But in the matters in hand, I find no such considerations been made by the Corporation although the Workmen have made requests and their refusal to at least acknowledge the request is in my view arbitrary and unreasonable and lacks uniformity.

The Labor Tribunal and the High Court have held that the termination of the services of the Workmen at the age of 55 years is unjust and unfair, hence, had

ordered that they be paid their basic salary equaling to the time they had lost being terminated.

Upon considering the material stated above, I am of the view that the Workmen had joined the service with the legitimate expectation that they would get the opportunity of working up to the age of 60 years but with the change in the management and the Corporation being privatized, the retirement scheme also had changed.

But the said scheme had given the Workmen an opportunity to request for an extension of which the final decision of extension lies with the authorities as stated above and it would be considered depending on the exigency of the services of each workman.

Hence, the said privilege does not give the Workmen the right to demand but an opportunity for them to request for an extension, which could be rejected as well.

However, the principles of natural justice require that, at the very least, those requests be considered before making a decision, which, in the instant matters, has not been done. Therefore, it appears that the Workmen had been stripped of their legitimate expectations even without a hearing.

Therefore, I see justification in the conclusions of the learned High Court Judge and the Labor Tribunal, who have also held along the same lines.

As such, I affirm the findings of the learned High Court Judge. With regard to the two questions of law, which are as follows:

1) In the circumstances relevant to these matters, was the decision to terminate employment valid in law?
2) In the circumstances of these matters was the computation of the remaining period of employment and the ensuing award of compensation payable in respect of such period of employment lawful and just?

I answer the first question of law in the negative and the second question of law in the affirmative, for the reason that the Workmen had been awarded with the basic salary for the period of 3 years.

The appeals of both parties are hereby dismissed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J.
I agree.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.
I agree.

JUDGE OF THE SUPREME COURT