

**Preliminary Year**  
**Sri Lanka Law College**

# **Industrial Law**



Empowers Independent Learning



**Independent Law Student Movement**

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# 1. The Nature of Contract of Employment

## **Employee:**

A person who works under the direction and control of another in return for a wage or a salary.

## **Employer:**

A person who engages another to work under his direction and control in return for a wage or a salary.

*- Oxford Dictionary of Law*

## **Types of Sectors:**

### 1. Public Service –

18<sup>th</sup> Amendment Article 54 & 55 to the Constitution applies. The Establishment Code, Public Services Commission, Administrative Appeals Tribunal, Human Rights Commission, Ombudsman and Supreme Court are relevant.

### 2. Semi-Government Sector –

*Labour legislation, Contract of Employment, Collective Agreements, Human Rights Commission, Ombudsman, Labour Courts and Supreme Court are relevant.*

### 3. Private Sector –

Labour legislation, Contract of Employment, Collective Agreements, Labour Courts and Labour Department applies.

### 4. Outsourcing –

- Company concentrates in their core business and transfer noncore work to specialised service provider agencies.
- Circumvents legal obligations.

5. Sub-contracting –

- Entire or partial production of goods / services.
- Circumvents legal obligations.

**Development for Change:**

- Sri Lanka is a welfare state that intervenes in employee-employer *industrial relations* to protect the weaker party of the society. The object is Social Justice.
- The minimum age of employment is 14 including domestic servants. In private sector, no maximum age for retirement and the terms of contract is binding.
- Employee has job security and social security (EPF, ETF, Gratuity, Maternity Leave etc.)
- *Labour Relations* connotes two parties i.e. employer and employee. In *Industrial Relations*, there is a third party i.e. the State.
- Collective Agreements are between Labour Unions and employer. They override the terms & conditions of a Contract of Employment.
- Labour Courts are not bound by the clauses in a Contract of Employment. They have to make *just and equitable* decisions.
- Civil Courts are bound by the contractual terms and the decisions need not be just and equitable. The common law presumes equal bargaining power of the parties.

## 2. Contract of Service – Tests

**Contract of Service vs. Contract for Service:**

Tests are available to identify whether a worker is an independent contractor or an employee.

1. Control Test
2. Integration Test

3. Economic Reality Test

4. Multiple Test

1. Control Test –

If a worker is subject to the command of his master on the manner in which he shall do his work (what, when, where, how), he is in contract of service.

- Cannot delegate his work to another.
- Cannot work in any other place as he pleases.

This cannot test expert workers E.g.: a Surgeon.

➤ Yewens v. Noakes, Bramwell J.

2. Integration Test –

If a person's work is done as an integral part of the business, it is 'contract of service'. If his work is not integrated to, but only an accessory to the business, it is 'contract for service'.

➤ Stevenson, Jordan & Harrison v. MacDonald & Evans, Denning LJ.

➤ Perera v. Marikar Bawa Ltd.

3. Economic Reality Test –

Whether the worker is in business on his own account or works for another who takes the ultimate loss or profit of the business.

➤ Market Investigations Ltd v. Minister of Social Security (1968) 3 All E.R 732 at p. 737

4. Multiple Test –

The question can be only settled by examining various elements of relationship between the parties.

➤ In Montreal v. Montreal Locomotive Works, Lord Wright

➤ Ready Mixed Concrete Ltd v. Minister of Pensions & National Insurance

Made the lorry available throughout the contract period to carry and deliver concrete, painted in company's colour. Wear company's uniform and carry out all responsible orders. Payment according to a rate per mile for the quantity of deliveries. Company had the right to acquire the vehicle. Contract provided "Independent Contractor". Free to decide about the maintenance of the vehicle.



Held: Independent contractor

Requirements for a **Contract of Service** according to McKenna, J:

- Conditions for Contract of Service.
- Work and skill for consideration
- Subject to other's control in a sufficient degree
- Other provisions of the contract are consistent with a contract of service

"The ownership of the assets, the chance of profit and the risk of loss in the business of carriage are his and not the company's". Contract of Carriage not a Contract of Service

- Rev. Father Benedict of Youth Fisheries Training Project v. Denzil Perera
- Instant Marketing Pvt Ltd v. Ranaweera
- Ceylinco Insurance Co. Ltd v. Commissioner of Labour

## 2. Types of Employment

1. Monthly contract of employment
2. Fixed term contract
3. Temporary contract of employment
4. Casual employment
5. Seasonal employment
6. Apprenticeship and training
7. Probation

### 1. Monthly Contract of Employment –

This is permanent employment, contract automatically renewed every month until he/she reaches the age of retirement. (No age of retirement for private sector)

### 2. Fixed Term Contracts –

- i. Worker is employed for a fixed term, automatic termination and no guarantee of continuous employment.
- ii. The terms of contract cannot contain any other option for termination other than the end of the said fixed term.

➤ G.O. Buyser v. Harrison & Crosfield Ltd. The court held that non-renewal of the 3 year contract is unjustified. Firstly, at the time of signing the renewal in a previous occasion, he was informed that it's a mere formality and he could continue until 55 and that his age of retirement is 55 by letter too.. Secondly, in evidence, the employer admitted that fixed term contracts are automatically renewed.

➤ In BBC v. Ioannou, Lord Denning; "The two-year fixed-term contract stated that it could be terminated by either party with 3 months' notice. The determination by notice is destructive to any 'fixed-term'".

➤ Y.G. De Silva v. ANCL. The court pointed out that where a fixed term contract is not renewed, the employee have no claim for reinstatement before an LT, because such claim could be made in terms of Section 31B (1) (a) only if services were terminated *by* the employer.

### 3. Temporary Contract of Employment –

A temporary employee is one who is employed to satisfy an employer's temporary need, the duration of which is limited either by the time or job. The work would be a part and parcel of the employer's normal business E.g.: A temporary Telephone Operator until the permanent Telephone Operator completes her maternity leave.

➤ Lanka Podu Seva Sangamaya (1995) 1 Sri LR 135

➤ Lanka Wall Tiles Ltd (1992) BLR 40

### 4. Casual Employment –

A casual worker's services would be required by chance, for short periods at irregular intervals. Employed by chance on no contract to employ.

E.g.: Window cleaner, employed as and when the owner thinks that the windows are dirty. If the window cleaning is at fixed intervals and regular, it is not casual employment.



Hill v. Beg (1909) 2 KB 802

A man was occupied in a house to clean windows at irregular intervals for about six weeks during the span of two years. He was paid daily for his work. There was no agreement between the parties of either permanent or periodic employment. He was held to be a casual employee.



In All Ceylon Commercial & Industrial Workers' Union v. Peiris I.D. Nos. 44 & 58 CGG 11,471 of 8-8-1958 p.2213. "In building Lorry and Bus bodies; a business of this size and nature, his entire labour force is casual..."



Ceylon Ceramics Corporation v. Weerasinghe (SC 24-25/76). The worker was employed as Trainee Sales Assistant, OIC of a Sales Room. The LT and HC held that her character of employment was permanent as she was trained, her daily wages were increased and she was given responsibility.



In Superintendent of Pussalla State Plantation Parakaduwa v. Sri Lanka Nidahas Sevaka Sangamaya (1997) 1 Sri LR 108 at 112, G.P.S. De Silva, CJ  
"The facts show that the description of the workman as 'casual' is not true and he is a permanent employee".



Merril J Fernando & Co. v. Deimon Singho. It was held that a casual employee has no right for reinstatement since there is no former position he can be placed in.

5. Seasonal Employment –

The work is required only during a particular period of the year.

E.g.: Residential hotel staff during Tourist season. The question of entitlement to re-employment is based on;

- a) Their contract of employment.
- b) The custom of the particular business.

6. Apprenticeship & Training –

An apprentice serves his master who teaches, with the intention of learning his trade and not necessarily to earn money.

The legal framework expressly recognizes three forms;

- i. Decisions of Wages Boards (Engineering, Printing, Garment Trades)
  - ii. Employed under Employment of Trainees (Private Sector) Law No. 8 of 1978.
  - iii. Apprentices under National Apprenticeship Act No. 49 of 1971.
- a. They are not covered by; S & OEA, Industrial Disputes Act, WBO, TUO, TEWA or any collective agreements.
  - b. They are covered by; WCO, FO and EPFA.

7. Probation –

The testing of conduct or character of a person is represented by this term. They are on no different footing to other monthly contracted employees other than the different principles applicable to termination.

- a. No automatic confirmation.
- b. Employer is the sole judge and after assessing the aptitudes, abilities, characteristics, a probationer can be terminated or extended *only if unsatisfied*.
- c. Though there is no room for victimization or mala fide termination, the burden lies on the employee to establish unjustifiable termination.



State Distilleries Corp. v. Rupasinghe (1994) 2 SLR 395, SC held the principle difference between a confirmed employer and a probationer as follows. In the former, the burden lies on the employer to justify the termination by reference to objective standards; where in the later, it is up to the probationer to prove that the termination is unjust. The probationer must establish at least a prima facie case of mala fide, before the employer is called upon to adduce his reasons for dismissal. The employer does not have to show that the dismissal was objectively justified.

- In Musajeeds Ltd v. Rasaiah (1996) SLR 365, “for the purpose of confirmation, the probationer must perform his services to the satisfaction of his employer. The employer therefore; is the sole judge to decide whether the service of the probationer is satisfactory or not”.
- Ceylon Cold Stores (1995) 1 SLR 261
- Ceylon Ceramics Corporation (1986) 1 SLR 287
- Hettiarachchi v. Vidyalankara University 76 NLR 47
- Brown & Co (1996) 1 SLR 334
- Anderson (2001) 1 SLR 168

## Settlement of Industrial Disputes

### Ingredients:

- a. Parties (employer, workmen, employee unions)
- b. Subject matter (employment, non-employment, termination, reinstatement etc.)
- c. A dispute

### Industrial Dispute vs. Other Disputes –

- In Industrial Dispute, both parties are together and should continue to work together.
- Industrial Dispute focuses on settlement and maintenance of harmony.

## The Industrial Disputes Act:

An Act to provide for

- the prevention,
- investigation and
- settlement of industrial disputes, and for matters connected therewith or incidental thereto.

[Long Title – Industrial Disputes Act]

## Employer:

‘Employer’ means

- any person who employs or
- on whose behalf any other person employs any workman and includes
- a body of employers (whether such body is a firm, company, corporation or trade union) and
- any person who on behalf of any other person employs any workman.

[Section 48]

## Agents:

Agent was not the employer.

- Carson Cumberbatch and Co.Ltd v. Nandasena, 77 NLR 73 Agent was not the employer. Agents have disclosed their identity.
- Shaw Wallaces and Hedges Ltd v. Palmerston Tea Co.Ltd (1982) 2 Sri LR 427

## Workman:

‘Workman’ means any person who has

- entered into or
- works under a contract with an employer in any capacity, whether the contract is
- expressed or implied,
- oral or in writing, and whether it is
- a contract of service or
- of apprenticeship, or
- a contract personally to execute any work or labour, and includes, any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and includes any person whose services have been terminated.

[Section 48]

## Industrial Dispute:

‘Industrial dispute’ means any dispute or difference between;

- an employer and a workman or
- between employers and workmen or
- between workmen and

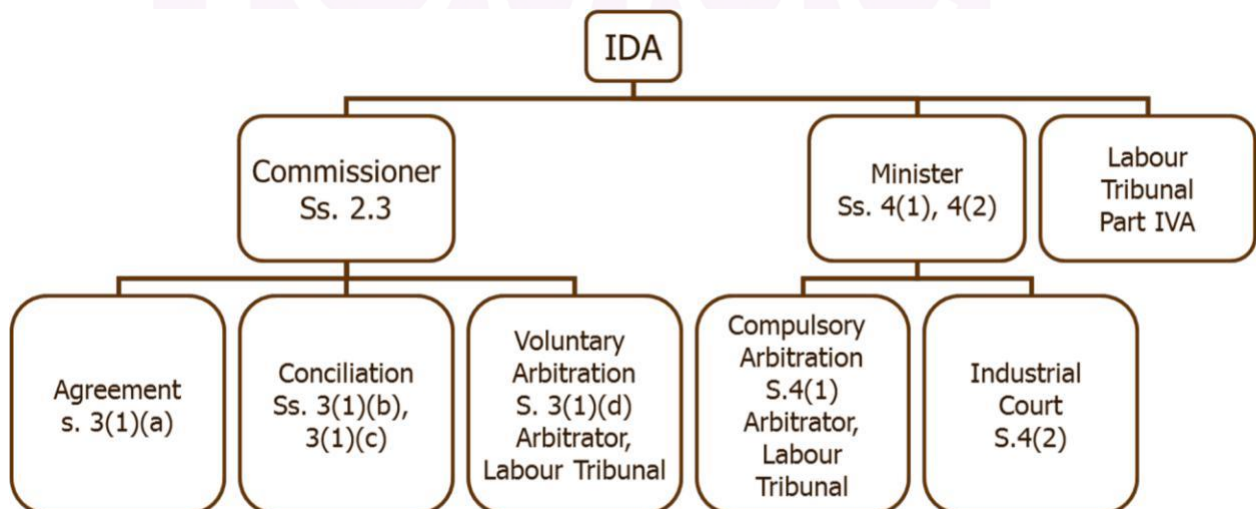
workmen connected with the;

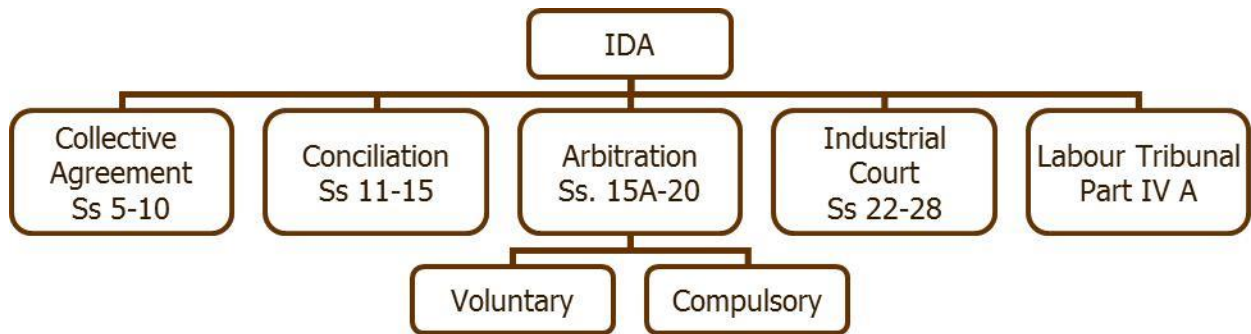
- employment or
- non-employment, or
- the terms of employment, or
- with the conditions of labour, or
- the termination of the services, or
- the reinstatement in service, of *any person*.

[Section 48]

❖ Section 48 is ‘*Interpretation*’

## Mechanisms to Settle Industrial Dispute:





The three main avenues are;

- i. Labour Commissioner
- ii. Labour Minister
- iii. Labour Tribunal

## **i. Commissioner:**

### **Powers of the Commissioner:**

#### Section 2 -

The Labour Commissioner can intervene when he anticipates an Industrial Dispute or when an Industrial Dispute exists. He should prevent an Industrial Dispute or settle an Industrial Dispute.

#### Section 3 -

Describes how to settle an Industrial Dispute.

The Commissioner can induce;

- a. Agreement
- b. Conciliation
- c. Voluntary arbitration

#### **a. Agreement:**

These refer to any binding Collective agreements etc. that have been reached prior to the dispute at hand.



### **b. Conciliation:**

The Commissioner has to bring the parties to the negotiation table for a settlement.

Best method for settlement of industrial disputes with compromises and win-win situation.

- Fair and amicable settlement of the dispute [Section 11(1)]
- Memorandum of settlement shall be drawn up and be signed by both parties [Section 12(1)]
- Binds the parties [Section 14]
- Repudiation of settlement [Section 15]
- Cannot strike against settlement [Section 40(1)]

#### Advantages -

- Prompt compared to other methods
- Speedy settlement
- Less expensive
- Parties clarify their positions and take responsibilities
- A wider range of issues are discussed
- Futuristic approach
- Parties own the settlement – not imposed on them
- Confidentiality maintained
- Less written work
- No technical issues
- Escalation of conflict prevented
- Transformation of conflict prevented
- Greater acceptance by the parties
- No appeal or writ cases

### **c. Voluntary Arbitration:**

*Discussed under 5. Industrial Arbitration*

## ii. Minister:

### **Powers of the Minister:**

- a. Section 4 (1) - Compulsory arbitration
- b. Section 4 (2) - Industrial Court

#### **a. Compulsory Arbitration:**

*Discussed under 5. Industrial Arbitration*

Could the Minister revoke his reference and make a fresh reference?

Although the minister can make reference to an Arbitrator, it does not provide for revocation of an already referred Arbitrator.

#### Frustration -

If the Arbitrator dies, in a coma or left the country, then revocation is allowed and is termed 'frustration'.

- Nadarajah v. Krishnadasan, (1975) 78 NLR 255
- Equipment and Construction Co.Ltd v. Ranasinghe, (1985) 1 SLR 82
- Intabex (Lanka) Ltd v. Perera, C.A.No. 408/97

#### **b. Industrial Court:**

*Discussed under 6. Industrial Court*

## iii. Labour Tribunal:

*Discussed under 7. Labour Tribunals*

## 4. Industrial Arbitration

### Voluntary Arbitration:

Falls within the power of the Labour Commissioner under Section 3(1) (d).

If the parties to the industrial dispute or their representative consent, refer that dispute, by an order in writing, for settlement by arbitration to an arbitrator nominated jointly by such parties or representatives, or in the absence of such nomination, to an arbitrator or body of arbitrators appointed by the Commissioner or to a labour tribunal.

[Section 3(1) (d)]

### Compulsory Arbitration:

Falls within the power of the Minister under Section 4(1)

The Minister may, if he is of the opinion that an industrial dispute is a minor dispute, refer it, by an order in writing, for settlement by arbitration to an arbitrator appointed by the Minister or to a labour tribunal, notwithstanding that the parties to such dispute or their representatives do not consent to such reference.

[Section 4(1)]

### Determination whether Arbitration or Application to Labour Tribunal:

#### A Labour Tribunal Shall -

Where it is so satisfied that such matter constitutes, or forms part of an industrial dispute referred by the Minister under section 4 for settlement by arbitration to an arbitrator, or for settlement to an industrial court, makes order dismissing the application without prejudice to the rights of the parties in the industrial dispute.

[Section 31B (2) (b)]

## **Arbitrator:**

### **Scope of Jurisdiction:**

#### Reference under Section 3(1) (d) or 4(1) and statement specifying matters in dispute (Section 16)

Nothing in the preceding provisions of this section shall be deemed to be in derogation of the power of the arbitrator to whom the dispute is referred to admit, consider and decide any other matter which is shown to his satisfaction to have been a matter in dispute between the parties prior to the date of the aforesaid order, provided such matter arises out of or is connected with a matter specified in the statement prepared by the Commissioner.

[Proviso to section 16]

The industrial court, arbitrator or labour tribunal may, at any time after the commencement of any proceedings in respect of an industrial dispute, permit any party to raise any fresh matters relating to the dispute for the decision of such court, arbitrator or tribunal, if such court, arbitrator or tribunal is satisfied that such matter could not have been raised at the commencement of the proceedings.

[Section 36(5)]

### **Powers of an Arbitrator:**

- Unlike the 'judicial power' of the Court/ Judges, an Arbitrator has 'arbitral powers'. The arbitrator's decision is binding and if a party violates an *award* it is a criminal offence under Section 40 (1).

When an industrial dispute has been referred under section 3(1) (d) or section 4 (1) to an arbitrator for settlement by arbitration, he shall make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award as may appear to him just and equitable.

[Section 17(1)]

- See section 36(1) (b) – Power to require any person to give evidence.

“This provision, however, does not, in respect of evidence, restrict the arbitrator to evidence that is “tendered by the parties” since under Section 36(1) an arbitrator is entitled to require persons to furnish particulars, documents and give evidence”.

- *S.R. De Silva - Legal Framework of Industrial Relations in Ceylon, pp 279*

- In State Bank of India v. Edirisinghe (1991) 1 Sri LR 397 at 415, Tambiah, J. “It is clear that an Industrial arbitrator is not tied down and fettered by the terms of contract of employment between the employer and the workman. He can create new rights and introduce new obligations between the parties.”

- If the matter referred to is A; he cannot consider disputes B, C, D etc. but can look into the connected matters i.e., A<sub>1</sub>, A<sub>2</sub>, A<sub>3</sub> so on.

- Standard Chartered Grindlays Bank Ltd v. Minister of Labour, 2002 B.L.R. P. 14  
Arbitrator's award could include connected matters in view of proviso to section 16.

### **Duty of an Arbitrator:**

The Arbitrator has to consider;

1. The dispute,
2. The evidence,
3. The law of the country,
4. The interests of both parties, and make a just and equitable decision.

- In Nadarajah Ltd v. Krishnadasan (1975) 78 NLR 255 at 261, Sharvanandha, J. “Arbitrator has to act judicially in making the ultimate award which is binding on the parties. His function is judicial in the sense that he has to hear the parties, decide facts and apply rules with judicial impartiality”.

- In Sukumaran v. Maharaja Organization, C.A.No.1684/2003, Marsoof, J. "It is settled law today, that arbitrators under the Industrial Disputes Act exercise arbitral and not judicial power."

### **Just and Equitable Award:**

- In Municipal Council of Colombo v. Munasinghe (1968) 71 NLR 223 at 225, H.N.G.Fernando, C.J.  
"The mandate which the Arbitrator in an industrial dispute holds under the law requires him to make an award which is just and equitable, and not necessarily an award which favours an employee."  
"...when the Industrial Disputes Act confers on an Arbitrator the discretion to make an award which is 'just and equitable', the Legislature did not intend to confer on an Arbitrator the freedom of a wild horse..."

### **Effect of an Award:**

Every award of an arbitrator made in an industrial dispute and for the time being in force shall, for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in the award in accordance with the provisions of section 17(2); and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award.

(Section 19)

- In State Bank of India v. Edirisinghe [(1991) 1 Sri LR 397 at 415], Tambiah, J. stated that what the award seeks to do is to create new terms and conditions which are statutorily made implied terms which become implied terms of the contract.

### **Repudiation of Award:**

Termination of settlement could be affected by one party giving *Letter of Repudiation* to the commissioner and the other party.

According to Section 20 (2) (a), an award made by an Arbitrator cannot be repudiated within 12 months from the date of award.

Where a valid notice of repudiation of an award is received by the Commissioner, then, subject as hereinafter provided-

- a) The award to which such notice relates shall cease to have effect upon the expiration of three months immediately succeeding the month in which the notice is so received by the Commissioner or upon the expiration of twelve months from the date of which the award came into force as provided in section 18(2), whichever is the later.

[Section 20(2) (a)]

### **Writ of Certiorari:**

Could Certiorari be an effective and alternative remedy as Section 20(1) provides for repudiation?

Industrial Disputes Act does not provide appeal against an award from an Arbitrator. Therefore, a party dissatisfied has to invoke a writ of Certiorari to *quash* an award.

If there is any other effective remedy, the writ will not be issued.

- Obeysekera v. Albert and others, (1978-79) 2 Sri LR 220 (C/A)  
Petitioner was not entitled to writ of certiorari (discretionary remedy).
- Fernando v. United Workers Union, (1990) B.L.R Vol III, Part I, P. 25; (1989) 2 Sri LR 199 (S/C)  
Section 20(1) would not disentitle writ of certiorari.

## 5. Industrial Court

Falls under the power of the Minister under Section 4 (2).

1. Panel of not less than 5 members be appointed by the President. [Section 22 (1)]
2. The Labour Minister can select 1 or 3 members from this and constitute an IC on an ad-hoc basis. [Section 22 (3)]
3. Thereafter, the minister can refer a dispute to IC. [Section 4 (2)]
4. A report/ statement by the Commissioner setting out each of the matters which to his knowledge is in dispute between the parties will be submitted to the IC, accompanying the reference by the Minister [Section 23]
5. Industrial Court could admit, consider and decide any other matter which has been a matter in dispute between the parties prior to the date of the reference.
6. IC conducts inquiries, hear evidence and make a just & equitable decision. [Section 24 (1)]



In Hayleys Ltd v. De Silva (1962) 64 NLR 130 at pp. 139-140, Weerasooriya.J stated on the importance of considering the material question that: "...I think that these provisions, by necessary implication, also require an Industrial Court to consider and decide every material question involved in the dispute, application or other matter referred to it by the Minister. A failure on the part of the Industrial Court to consider and decide a question which the statute requires the Court to decide would, in my opinion, be an error of law. Moreover the error would be one due to a disregard of statutory provisions."

7. The commissioner shall publish the award in the Gazette. [Section 25 (1)]
8. The award will come in to force on the date of publication or as specified in the award. [Section 25 (2)]
9. The award will bind the parties and become an implied term of the contract of employment. [Section 26]
10. A dissatisfied party can request the minister to reconsider the award.



The minister then refers back to the IC[Section 27]

- However, if such application is made within the period of 12 months from the date it came into force, it shall not be entertained by the Minister unless it is supported by a certificate underhand of the Commissioner to the effect that a change in the economic and labour conditions warrants the reconsideration.

11. For an award under reconsideration, the IC can;

- a. Confirm
- b. Cancel
- c. Modify
- d. Make a new award

[Section 28]

12. Once the IC makes a decision on a given Industrial Dispute, it is dissolved.

## 6. Labour Tribunal

### Jurisdiction:

- a. Termination of Services
- b. Claims on Gratuity
- c. Terms of Employment

A workman or a trade union on behalf of a workman may make an application to a Labour Tribunal for relief or redress in respect of the following matters:-

- a. The termination of his services by his employer;
- b. The question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits, where such workman has been employed in any industry employing less than fifteen workman on any date during the period of twelve months preceding the termination of the

services of the workman who makes the application or in respect of whom the application is made to the tribunal;

- c. The question whether the forfeiture of a gratuity in terms of the Payment of Gratuity Act, 1983 has been correctly made in terms of that act;
- d. Such other matters relating to the terms of employment, or the conditions of labour, of a workman as may be prescribed.

Section 31B (1)

- United Engineering Workers Union v. Devanayagam 69 NLR 289 at 299  
Section 31B (1) is the gateway through which a workman must pass to get his application before a tribunal but it is sections 31B (4) and 31C(1) which state the powers and duties of a tribunal on an application.

### Time Period:

Application to a Labour Tribunal shall be made within a period of six months from the date of termination of the services. [Section 31B(7)]

### Application:

1. Application need not be in the identical format.
  - De Silva Case - Sriskantha's Law Report (3) p.01
2. Not much reliance on legal technicalities.
  - Gunasinghe Case 72 NLR 76
3. Widow of the employee can be substituted.
  - Amarajeewa Case (1993) 2 Sri LR 327
4. No case against the widow of the employer.
  - Arnolda Case 64 NLR 153
5. Employer's heir cannot be substituted in labour tribunal proceedings.
  - Savoy Theaters Ltd Case, (1982) 2 Sri LR 753

6. Relief from a district court is not ousted.
  - Fernando Case (2011) BLR 242

### **Dismissal of Application:**

Labour Tribunal shall:-

Where it is so satisfied that such matter constitutes, or forms part of an industrial dispute referred by the Minister under section 4 for settlement by arbitration to an arbitrator, or for settlement to an industrial court, makes order dismissing the application without prejudice to the rights of the parties in the industrial dispute.

Section 31B (2) (b)

- Upali Newspapers Ltd v. Eksath Kamkaru Samithiya (1999) 3 Sri LR 205 S/C Appeal No. 70/99



### **a. Termination of Services:**

- Independent Industrial and Commercial Employees' Union v. Board of Directors, Co-operative Wholesale Establishment, Colombo 74 NLR 344 at 346  
"The Industrial Disputes Act does not refer to the termination of the contract of employment (which is a subject more appropriate to the law of contract) but to the termination of the services of the workman."
- United Engineering Workers' Union v. Devanayagam 69 NLR 289 at 300 -  
"Section 31B (1) does not say that a workman can apply for relief in respect of the wrongful termination of his services. It merely says that he can apply in respect of the termination of his services. This omission of the word 'wrongful' is significant."

### **Duties and Powers:**

Any relief or redress may be granted by a labour tribunal to a workman upon an application made under subsection (1) notwithstanding anything to the contrary in any contract of service between him and his employer.

Section 31B (4)

A Labour Tribunal has a duty to make all such inquiries into the application and hear all such evidence as the tribunal may consider necessary, and thereafter make such order as may appear to the tribunal to be just and equitable.

Section 31C (1)

- In United Engineering Workers' Union v. Devanayagam(69NLR 289 at 30)  
"Section 31B(1)(b) is curiously worded. It does say that a workman can apply for a gratuity or other benefits legally due to him but that he can apply in respect of the question whether they are due. If section 31B(1)(b) stood alone then the words 'are due' might be interpreted as meaning 'are legally due'. But this sub section must be read with Section 31B(4) and 31C(1) and reading it with these sub-sections, it is clear that the tribunal's

decision is not to be whether a gratuity or other benefits are legally due but whether it is just and equitable"

## **b. Claim of Gratuity:**

- If the workplace has less than 15 employees, the workmen have to go to LT, if Gratuity is not paid. [Section 31 (B) (1) (b)]
- If there are more than 15 workmen, the Gratuity Act prevails and the workman has to refer to the Labour Commissioner. They can go to LT regarding forfeiture (deductions made) of gratuity. [Section 31 (B) (1) (c)]
- The time period for claim of gratuity is 6 months.

### ➤ United Engineering Workers' Union v. Devanayagam 69 NLR 289 at 300

Section 31B (1) (b) is curiously worded. It does not say that a workman can apply for a gratuity or other benefits legally due to him but that he can apply in respect of the question whether they are due. The question is one for the tribunal to determine and, in the light of section 31C (1) to decide on the basis of what appears to it just and equitable. If section 31B (1) (b) stood alone then the words 'are due' might be interpreted as meaning 'are legally due' but this sub-section must be read with Sections 31B (4) and 31C (1) and reading it with these sub-sections, it is clear that the tribunal's decision is not to be whether a gratuity or other benefit is legally due but whether it is just and equitable that it should be paid.



*See IDA;*

31B. (1)(b) *"the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of any such benefits..."*

31B (4) *"...notwithstanding anything to the contrary in any contract of service..."* 31C (1) *"... make such order as may appear to the tribunal to be just and equitable".*

### **Evidence:**

A Labour Tribunal is not bound by any of the provisions of the evidence ordinance.

Section 36(4)

- Jayasuriya v. Sri Lanka State Plantations Corporation (1995) 2 Sri LR 379 at 401 A Labour Tribunal cannot ignore the rules of evidence in the guise of making just and equitable order.
- Somawathie v. Baksons Textile Industries Ltd 79(1) NLR 204 Labour Tribunal can act on confession.
- Piyasena Silva v. Ceylon Fisheries Corporation (1994) 2 Sri LR 292 Standard of proof is on a balance of probability and not on beyond reasonable doubt.

### **Relief or Redress:**

- In Walker Sons & Co Ltd v. Fry 68 NLR 73 at 113, Tambiah.J:  
“The words ‘relief’ and ‘redress’ in section 31B (4) are also significant. Redress is a word that is used with reference to grievance. A grievance arises when something legally due is not given. The word ‘relief’ clearly indicates cases where a person is not enforcing a legal right. Relief may be given to a workman although the employer has adhered to the terms of the contract and has fulfilled his legal obligation”.

### **Just and Equitable Order:**

- Peiris v. Podisingho 78 CLW 46 at 48  
The test of a just and equitable order is that those qualities would be apparent to any fair-minded person reading the order.
- Richard Peiris & Co Ltd v. Wijesiriwardena 62 NLR 233 at 235  
Justice and equity can themselves be measured not according to the urgings of a kind heart but only within the framework of the law.

- In Hatton National Bank v. Perera (1996) 2 Sri LR 231 at 236,  
G.P.S.De Silva CJ. stated that “just and equitable order made by a labour tribunal must be fair and just by both parties”.
- In Municipal Council of Colombo v. Munasinghe (71 NLR 223 at 225)  
H.N.G. Fernando CJ stated that an award must be ‘just and equitable’ as between the parties to a dispute and an arbitrator does not have the freedom of a wild horse in making a just and equitable award.

### **Reliefs:**

#### Section 33(1)

- Reinstatement – Section 33(1)(b)
- Compensation – Section 33(1)(d)

### **Compensation**

Payment of compensation to the workman as an alternative to his reinstatement if the employment is in any of the following capacities:

- Personal Secretary
- Personal Clerk
- Personal Attendant
- Chauffeur
- Domestic Servant
- Any other similar capacity prescribed in Section 33(3)

- Payment of Compensation as an alternative to reinstatement
  - If the workman so requests - Section 33(5)
  - In any case where the Tribunal thinks fit so to do - Section 33(6)

### **When making an order for reinstatement;**

- In De Silva v. Ceylon Estates Staffs' Union SC No:221/72, SCM 15/5/74  
“The tribunal must be mindful of the nature of the applicants' employment, the impact a reinstatement can make on the industry and the employer/employee relationship. It should also consider whether an order of reinstatement would disrupt and disorganize the management or administration of the business. it must also take into account that efficiency, discipline and sound business principles should never be impaired by its order”

### **When assessing the quantum of compensation:**

- In Ceylon Transport Board v. Wijeratne 77 NLR 481 at 498  
“Account should be taken of such circumstances;
  - Nature of the employer's business and his capacity to pay
  - The employees age, the nature of his employment, length of service, seniority, present salary, future prospects, opportunities for obtaining similar alternative employment, his past conduct
  - The manner of the dismissal including the nature of the charge, the extent to which the employee's actions were blameworthy and the effect of the dismissal on future pension rights and any other relevant considerations
  - Sums paid or actually earned or which should also have been earned since the dismissal took place.”
- Jayasuriya case [(1995) 2SLR 379] - assessment of compensation
- Saleem case [(1994) 3SLR 409] - compensation where the termination is justified

### **Appeal:**

Section 31D – Appeal to High Court on question of law arising out of the order of a Labour Tribunal.

- Jayasuriya v. SL State Plantation Corp (1995) 2 Sri LR 379 at 391 See for question of law.

Section 31DD – Appeal to the Supreme Court from High Court



### The Minister vs. Labour Tribunal:

- In case of termination of services, the workman can make an application to the LT (Judiciary).
- At the same time, if an Industrial Dispute exists related to termination of services, the Minister (Executive) can refer the dispute for arbitration.

➤ Wimalasena v. Navaratne, (1978-79) 2 Sri LR 10

While the case was pending before the LT, the minister referred to arbitration. The decision was that LT should dismiss the case according to Section 31 B (2) (b)

- ❖ This is a situation where 'Executive interferes with the Judiciary'.  
***HC overruled this by the Upali Newspapers Ltd Case;***

➤ Upali Newspapers Ltd v. Eksath Kamkaru Samithiya (1999) 3 Sri LR 205; (2001) 1 Sri LR 105

If the workman has first applied to the LT, the minister cannot refer the dispute for arbitration. Likewise, if the minister has first referred the dispute for arbitration, the workman cannot apply to LT.

- ❖ The principle is; whatever the first prevails.
- ❖ *See* - Combined effect of Articles 170 and 111C of the Constitution.

***111C. (1) Interference with judiciary an offence.***

*Every ... person entrusted by law with judicial powers ... shall exercise and perform such powers ... without ... interference from any other person except a ... person entitled under law..."*

*(2) Every person who... interfere... shall be guilty of an offence punishable by ... imprisonment... or with fine ..."*

*170. "judicial officer" means any person who holds office as –*

*(b) "... presiding officer of ... tribunal or institution created ... for the adjudication of any labour or other dispute ..."*

## 7. Termination of Employment

Two main modes exist;

1. Disciplinary Termination
2. Non- disciplinary termination

- The workman upon termination should file a case in LT. Whether a termination is wrongful or not, the workman can apply. Section 31B (1) (a) does not specify wrongfulness.

“(1) A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to a labour tribunal for relief or redress in respect of any of the following matters:-

(a) the termination of his services by his employer;”

[Section 31B. (1)(a)]

- The time period is .
- Burdon of proof is on the employer.
- The standard is ‘balance of probability’.

### Other Types of Termination of Employment/Services:

- a. Constructive termination
- b. Vacation of post
- c. Resignation
- d. Effluxion of time
- e. Frustration
- f. Operation of law

a. Constructive Termination –

The employer, instead of officially terminating the services of a workman, creates a situation that forces an employee to leave the workplace.



In Western Excavating Ltd v. Sharp 1978 QB 761 at 769 Lord Denning stated that “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essentials terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed’

“The conduct on the part of an employer which would amount to a constructive dismissal would have to amount to at least a breach of an implied obligation fundamental to the employment relationship”

*S.R.De Silva, Contract of Employment 1998 Ed pp188*



Murray v. Minister of Defence (2009) 3 SA 130

For successful claim based on constructive dismissal, employer is to be blamed for intolerable conditions.

➤ Nandasena v. Uva Regional Transport Board (1993) 1 Sri LR 318 at 327 Vexatious punishment transfer amounts to a constructive termination.

➤ Superintendent, Pambigama Estate v. National Estate Services Union C.A. No: 172/88

It has been an accepted principle that the question of transfer is an internal management function and it is implied there in the contract unless the letter of appointment stipulates that it is not transferable. The refusal to comply with a reasonable transfer order entitles the employer to terminate the workman’s services.

b. Vacation of Post –

- Building Materials Corporation v. Jathika Sevaka Sangamaya (1993) 2 Sri LR 316 at 322,

Where an employee endeavours to keep away from work or refuses or fails to report to work or duty without an acceptable excuse for a reasonably long period of time such conduct would necessarily be a ground which justifies the employer to consider the employee as having vacated service.

- Kalamazoo Industries Ltd v. Minister of Labour and Vocational Training (1998) 1 Sri LR 235 at 245

Require two points to be established;

- i. Physical Act
- ii. Mental Element (intention to desert and abandon the employment)

- Warnakulasooriya v. Hotel Developers (Lanka) Ltd, SC Appeal 101/2014 (Decided on 26-07-2018)

A female worker worked in the company for many years as the secretary to the executive chef of the hotel. In the past in some occasions she did not report to work without permission of the employer. The company issued warning letter to her. She had a surgery and had a medical leave approved by the company. She returned to work after medical leave and for some days and did not report to work for 12 days without obtaining permission. The company sent a telegram requesting her to report to work and she returned to work on next working day with a medical certificate approved by the company doctor. The company issued the letter of vacation of post. LT case was filed and it went to the Supreme Court on appeal. The SC stated that she did not have the intention to abandon her employment. Therefore it will not a reason for vacation of post. The SC ordered to pay compensation.

*Facts and Circumstances* –

- Pfizer Limited v. Rasanayagam (1991)1 SLR 290 at 294,

The question as to whether a given set of circumstances constitutes a vacation of employment or a constructive termination is a question of fact to be determined by the Tribunal having regard to all the facts and circumstances which transpire in the evidence.

c. Resignation –

- In public sector, the resignation letter should be accepted by the appointing body.
- In private sector, the terms of notice on resignation prevails and the resignation will come in to effect with or without acceptance.

d. Effluxion of Time –

This is normal expiration due to passage of time.

e. Frustration –

Cessation of employment occurs due to a particular work environment or trade coming to an end.

Eg.: a business or workplace completely destroyed due to natural disaster.

f. Operation of Law –

Occurs when a particular trade is halted by legislature.

Eg.: workers of an Asbestos factory shall lose their jobs, if a new law prohibits manufacture of Asbestos products.

## 1. Disciplinary Termination:

If an employee has committed an act which is against the rules, regulations, norms or ethics of a workplace, disciplinary termination can take place.

- The severity of misconduct should justify termination.
- Habitual misconduct should be followed up with warnings before termination.

- |                      |                          |
|----------------------|--------------------------|
| 1. Burdon of proof   | : Employer               |
| 2. Standard of proof | : Balance of probability |
| 3. Adjudication      | : Labour Tribunal        |

### Some Types of Misconduct:

Habitual absence, Late attendance, Negligence, Insubordination, Disobedience, Abuse, Assault, False allegation against superiors, Drunkenness, Dishonesty, Loss of confidence, Theft, Misconduct outside workplace.

- Habitual Absence –
  - Colombo Apothecaries Co Ltd v. Ceylon Press Workers' Union 75 NLR 182, (absenteeism even after several warnings)
- Insubordination –
  - Board of Govrnors for Zahira College v. Naina Mohamed (1999) 2 Sri LR 309 (teacher- inaction – supportive of unruly behaviour)
- Abuse –
  - Heath & Co (Ceylon) Ltd v. Kariyawasam (71 NLR 382) (use of obscene language coupled with threat of violence)
- Drunkenness –
  - General Manager, Ceylon Electricity Board v. Gunapala (1991) 1 Sri LR 304 (consumption of liquor while on duty)
- Dishonesty –
  - Public Trustee v. Ratnayake Banda (2000) 1 Sri LR 99 (false crop figure)
- Loss of Confidence –
  - National Savings Bank v. Ceylon Bank Employees' Union (1982) 2 Sri LR 629  
(examination offence)
- Misconduct outside workplace –
  - Ceylon Bank Employees Union v. Bank of Ceylon 79(1)NLR 133  
(running a business)

- Theft –

- Ceylon Cold Stores Ltd v. Sisil Beema Podu Seva Sangamaya (1986) CALR 342 (removal of a parcel of sugar)

Two factors need to be established –

a. Whether an act is a misconduct or not.

- If misconduct is established, termination could be justified. *See;*

- Shalimar Rope Works Mazdoor Union v. Shalimar Rope Works Ltd 1953 (2) LLJ 876,

- An act should be regarded as an act of misconduct if it is inconsistent with the fulfilment of express or implied conditions of service or if it has a material bearing on the smooth and efficient working of the concern.

- If no misconduct can be proved under disciplinary termination, reinstatement with back wages may be awarded.

b. Whether it justifies termination.

- If it is a minor misconduct, reinstatement without back wages may be awarded. *See;*

- Jeewandara Dayawathie v. Pugoda Textiles (Lanka) Ltd, S.C. No. 140/96 (attempted theft – discarded cloths, reinstatement without back wages)

**Disciplinary Inquiry:**

- No statutory obligation to conduct a disciplinary inquiry.
- Disciplinary inquiry should be conducted, if it is a requirement under a contract of employment or collective agreement.
- A Labour Tribunal may consider the evidence given in a disciplinary inquiry. *See;*
  - Batticaloa Multipurpose Co-operative Societies Union Ltd v. Velupillai 76 NLR 60 at 66
- The worker cannot be deprived of his wages during the period of suspension pending disciplinary inquiry. *See;*
  - Coats Thread Lanka (Pvt) Ltd v. Samarasundera, (2011) B.L.R 37

“An inquiry helps to establish the bona fides of the employer, and dismissal without inquiry may sometimes be indicative that the employer has acted arbitrarily”.

-S.R. De Silva, *The Legal Framework of Industrial Relations in Ceylon*, pp538

➤ Thavarayan v. Balakrishnan (1984) 1 SLR 189 at 193- 194

“When the employer relies on his domestic inquiry as an item of bona fide, the failure to hold a proper inquiry can be established in rebuttal by the aggrieved workman”.

-W.E.M. Abeysekera, *Industrial Law and Adjudication*, Vol 1, pp295

In government sector, a disciplinary inquiry is a must, as provided by Establishment Code and should take place before termination.

### **Reasons under the Termination of Employment of Workmen Act (TEWA):**

Where any employer terminates the scheduled employment of any workman by reason of punishment imposed by way of disciplinary action the employer shall notify such workman in writing the reasons for the termination of employment before the expiry of the second working day after the date of such termination. [Section 2(5)]

### **Burden of Proof:**

- Standard of proof is balance of probability.

“The burden is on the employer to justify the termination on the principle that ‘he who alters the status quo and not he who demands its restoration, must explain the reasons for such alteration”.

-S.R.De Silva, *The Legal Framework of Industrial Relations in Ceylon*- pg570-571

➤ Piyasena Silva v. Ceylon Fisheries Corporation (1994) 2 Sri LR 292



➤ Associated Battery Manufacturers (Ceylon) Ltd Case 77 NLR 541 at 553,

The whole object of labour adjudication is that of balancing the several interests involved, that of the worker in job security, since loss of his job may mean loss of his and his family's livelihood; that of the employer in retaining authority over matters affecting the efficient operations of the undertaking; that of the community in maintaining peaceful labour relations and avoiding unnecessary dislocations due either to unemployment or unproductive economic units. Each is equally important. None of these objectives can be achieved by the adoption of the standard of proof required in criminal cases in the determination of the facts which have to be established before a Labour Tribunal before it can exercise its jurisdiction to make an order which in all the circumstances of the case is just and equitable.

## 8. Non – Disciplinary Termination

### Related Legislation:

- a. Industrial Disputes Act
- b. Termination of Employment of Workmen (Special Provisions) Act (Termination Act)

### a. Industrial Disputes Act [Sections 31 E to H]:

31 E – Not applicable to;

- Employer who employ less than fifteen workmen
- Seasonal employment
- Workman employed for a period of less than one year

### Retrenchment:

'Retrenchment' means the termination by an employer of the services of a workman or workmen on the ground that such workman or workmen is or

are in excess of the number of workmen required by such employer to carry on his industry.

[Section 48]

➤ In Caledonian Estates Ltd v. Hillman (1977) 79-1 NLR 421, Sharvanandha J.

"A Labour Tribunal is thus entitled to grant compensation for loss of career if it thinks such relief is just and equitable in the circumstances, even though the termination is consequent to the exercise by the employer of his fundamental right to close down his business. By exercising his right to close down his business, the employer may frustrate the employee's reinstatement but he cannot escape his liability to pay compensation to the employee for loss of employment..."

#### Notice for Retrenchment –

- Duty of employer to give at least one month's notice of intended retrenchment to the workman, the trade union of the workman and to the Commissioner.

[Section 31F]

- Not to effect retrenchment until after the expiry of two months after the date of the notice.

[Section 31G]

#### Reference for Settlement –

If an industrial dispute arising out of intended retrenchment is referred by the Commissioner or Minister for settlement, employer shall not effect the retrenchment for a period of two months from the date such reference.

[Section 31H]

## **b. Termination of Employment of Workmen (Special Provisions) Act (TEW):**

### **Statutes:**

- TEW (Special Provisions) Act, No. 45 of 1971
- TEW (Special Provisions) (Amendment) Law, No. 4 of 1976
- TEW (Special Provisions) (Amendment) Act, No. 51 of 1988
- TEW (Special Provisions) (Amendment) Act, No. 12 of 2003
- Industrial Disputes (Hearing and Determination of Proceeding) (Special Provisions) Act, No. 13 of 2003
- TEW (Special Provisions) (Amendment) Act, No. 20 of 2008

### **Consent:**

2. (1) No employer shall terminate the scheduled employment of any workmen without-
- (a) The prior consent in writing of the workman; or
  - (b) The prior written approval of the Commissioner.

### **Powers of the Commissioner:**

- Such approval may be granted or refused.  
[Section 2(2) (a)]
- The Commissioner may, in his absolute discretion, decide to grant or refuse such approval.  
[Section 2(2) (b)]
- The Commissioner may, in his absolute discretion decide the terms and conditions subject to which his approval should be granted.  
[Section 2(2) (e)]

### Termination:

- Disciplinary termination excluded.

[Section 2(4)]

Termination includes;

- Temporary or Permanent non-employment.

[Section 2(4) (a)] •

Non-employment in consequence of closure.

[Section 2(4) (b)]

➤ St. Anthony's Ltd v. Ranjit Kumar(1978-79) 2 Sri LR 06

Inefficiency and incompetence cannot be equated to misconduct for which punishment by way of disciplinary action may be imposed.

➤ Satchithanandan v. Ghanam C.A. No: 476/86, C.A.M. 18.8.93

The Act is not applicable where the factory and headquarters were destroyed.

➤ Brown & Co Ltd v. Commissioner of Labour (2002) BLR 16 A probationer is not entitled to relief under the TEW Act.

### Non- Applicability:

The Act shall not apply;

- To an employer by whom less than fifteen workmen have been employed.
- To the workman who has been employed by an employer for a period of less than 180 days.
- Retirement in accordance with any collective agreement or contract of employment.
- To the Government or Local Government Service Commission or to any local authority or co-operative society or public corporation in its capacity as an employer.
- To the employment in contravention of the provisions of any law.

[Sections 3(1) (a)-(i)]

➤ In Onally Holdings PLC v. Minister of Labour CA No. 834/2010

The employer has not included any clause relating to age of retirement. 64 years old employee refused to retire and the employer terminated his employment. LT case was filed against the termination. CA held that the termination was illegal since the letter of appointment does not state the age of retirement. Therefore employer should follow the procedure under the TEWA. (Consent of the employee or approval of the commissioner)

**Illegal Termination:**

- The provisions of Part IVB of the **Industrial Disputes Act** shall not apply to any workman within the meaning of this Act.

[Section 4]

- Termination in contravention of the provisions of this Act, shall be illegal, null and void, and accordingly shall be of no effect whatsoever.

[Section 5]

**Relief:**

Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, the Commissioner may order such employer to continue to employ the workman, with effect from a date specified in such order, in the same capacity in which the workman was employed prior to such termination, and to pay the workman his wages and all other benefits which he would have otherwise received if his services had not been so terminated.

[Section 6]

➤ Eksath Kamkaru Samithiya v. Commissioner of Labour (2001) 2 SRL 137

Held that a commissioner can order only reinstatement under Section 6 but not compensation.

➤ Wickremasinghe v. Nethasinghe (2005) 1 SLR 97

➤ Samyang Lanka (Pvt) Ltd. V. madihahewa, Commissioner of Labour CA No: 1837/2004

In certain circumstances where reinstatement is not appropriate, commissioner can order compensation.

- Blanka Diomands (Pvt) Ltd. v. Coeme, (1996) 1 SLR200  
Compensation is also possible
- Lanka Multi Moulds (Pvt) Ltd. v. Towler (2001) 3SLR30  
Compensation is also possible

### **Compensation:**

- Compensation as an alternative to reinstatement for termination in consequence of closure. [Section 6A (1)]
- Application for relief should be made to the Commissioner within six months of the termination. [Section 6B (1)]
- It shall be duty of the Commissioner to make his decision/order under section 2, 6 and 6A (1) within two months of the date of receipt of the application.

[Sections 11, 12 and 13 of the Industrial Disputes (Hearing and Determination of Proceeding) (Special Provisions) Act]

### **Computation of any Compensation:**

Any sum of money to be paid as compensation to a workman on a decision or order made by the Commissioner under this Act, shall be computed in accordance with the formula.

[Section 6D]

### **Formula for Payment of Compensation:**

Gazette (Extraordinary) No. 1384/07 dated 15-03-2005

### **Natural Justice:**

The proceedings at any inquiry may be conducted by the Commissioner in any manner, not inconsistent with the principles of natural justice.

[Section 17]

- Panda Lanka Toys Exports (Pvt) Ltd v. Mahinda Madihahewa, Commissioner of Labour C.A No: 2412/2004

### **Reinstatement:**

- Eksath Kamkaru Samithiya v. Comm. of Labour (2001) 2 Sri LR 137 ➤  
Wickremasinghe v. Nethasinghe, (2005) 1 Sri LR 97

Should the Commissioner give reasons for his decision? –

- a. The Commissioner is not under a duty to give reasons.
  - Samalanka Ltd v. Weerakoon, Comm. of Labour (1994) 1 Sri LR 405
  - Yaseen Omar v. Pakistan International Airlines (1999) 2 Sri LR 375
- b. Natural justice also means that a party is entitled to a reasoned consideration of his case.
  - Karunadasa v. Unique Gemstones Ltd (1997) 1 Sri LR 256 (Fernando, J.)
  - Ceylon Printers Ltd v. Weerakoon, Comm. of Labour (1998) 2 Sri LR 29
- c. Reasons should be given by tribunal or public authority.
  - Kundanmala Ltd v. Wimalasena, Comm. of Labour (2001) 3 Sri LR 229
  - Liyanage v. Commissioner of Labour (2004) 2 Sri LR 23
  - Jefferjee v. Commissioner of Labour (2008) 1 Sri LR 12
  - Sirimasiri v. Commissioner of Elections, (2009) B.L.R 34

## 9. Reliefs for Termination

Reliefs are stated under Section 33(1).

1. Reinstatement
2. Compensation

### 1. Reinstatement [Section 33(1) (b)] :

#### Impact of Reinstatement:

- Attention should be paid to whether an order of reinstatement would disrupt and disorganise the management or administration of the business.
- It should never impair the efficiency, discipline and sound business principles by its order.

#### ➤ De Silva v Ceylon Estates staffs' Union, SC 211/72

The tribunal must be mindful of the nature of the applicants' employment, the impact a reinstatement can make on the industry and the employer/employee relationship. It should also consider whether an order of reinstatement would disrupt and disorganise the management or administration of the business. It must also take into account that efficiency, discipline and sound business principles should never be impaired by its order.

#### Strained Relationship -

##### ➤ Hatton National Bank v Perera, (1996) 2 Sri LR 231 at p. 236

Supreme Court considered the irresponsible manner of the workman who was a senior executive of the bank, the strained relationship between the workman and the bank and the period of time between the termination and the decision which was nearly 9 years to arrive the equitable decision to award compensation as an alternative to reinstatement.

#### Previous Conduct -



### Previous Conduct -

- In United Industrial Local Government and General Workers' Union v. Independent Newspapers Ltd, (1972) 75 NLR 529 at pp 531-532, Siva Supramaniam.J: Stated that the evidence placed before the tribunal in regard to the previous conduct of the workman will be very relevant in deciding whether order for compensation be made as an alternative to reinstatement.

### Reinstatement Not as a Right -

- United Industrial Local Government and General Workers' Union v. Independent Newspapers Ltd, (1972) 75 NLR 529 at p. 531

A finding that the termination of service of a workman is unjustified will not entitle the workman to demand as of right his reinstatement; nor will such an order be obligatory on the part of the tribunal. The tribunal is vested with discretion to decide whether payment of compensation should be ordered as an alternative to reinstatement.

### Reinstatement as a Rule -

- Sri Lanka State Plantations Corporation v. Lanka Podu Seva Sangamaya, (1990) 1 Sri LR 84 at pp. 89-90

Where termination of services is found unjustified the workman is as a rule entitled to reinstatement, and that an order for payment of compensation is competent in situations referred to in sections 33 (3), 33 (5) or where such order would be otherwise just and equitable in the circumstances contemplated by section 33 (6) of the Act.

## **2. Compensation:**

- In cases where any person has ceased to be an employer, labour courts can award compensation as an alternative to reinstatement.

[Sections 31B (6) and 47C] •

Payment of compensation to the workman as an alternative to his reinstatement if the employment is in any of the following capacities: ○

Personal Secretary ○ Personal Clerk ○ Personal attendant ○ Chauffeur

○ Domestic servant

○ Any other similar capacity prescribed

[Section 33(3)]

- Payment of compensation is to be made as an alternative to reinstatement, if the workman so requests.

[Section 33(5)] •

Payment of compensation is to be made as an alternative to reinstatement, in any case where the tribunal thinks fit so to do.

[Section 33(6)]

### **Quantum of Compensation:**

- In Jayasuriya v Sri Lanka State Plantations Corporation (1995) 2 Sri LR 379 at p. 409, Amerasinghe. J

Stated that normally the workman has to be compensated for the loss of earnings from the date of dismissal to the final determination of the case, loss of future earnings and benefits and loss of retirement benefits.

When assessing the quantum of compensation –

- Ceylon Transport Board v Wijeratne 77 NLR 481 at 498

Account should be taken of such circumstances as the nature of the employer's business and his capacity to pay, the employee's age, the nature of his employment, length of service, seniority, present salary, future prospects, opportunities for obtaining similar alternative employment, his past conduct, the circumstances and the manner of the dismissal including the nature of the charge levelled against the workman, the extent to which the employee's actions were blameworthy and the effect of the dismissal on future pension rights and any other relevant considerations. Account should also be taken of any sums paid or actually earned or which should also have been earned since the dismissal took place.

- Jayasuriya case (1995) 2 Sri LR 379 See for assessment of compensation

- Saleem case [(1994) 3 Sri LR 409]

See for compensation even where termination is justified.

## 10. Trade Union Law

### Important Principles of International Labour Law:

1. Right to form a trade union
  2. Right to join a trade union
  3. Right to engage in trade union activities
  4. Protection against anti trade union discrimination
  5. Promotion of collective bargaining
- } freedom of association

### International Standards:

1. Universal Declaration of Human Rights (UDHR) - Article 23
2. International Covenant on Civil and Political Rights (ICCPR) - Article 22
3. International Covenant on Economic, Social and Cultural Rights (ICESCR) - Article 8
4. Core Conventions of the ILO
  - i. Convention 87 - Freedom of Association and Protection of the Right to Organize Convention (1948)
  - ii. Convention 98 - Right to Organize and Collective Bargaining Convention (1949)
  - iii. C 29, Forced Labour
  - vi. C 111, Discrimination (Employment and Occupation) Convention (1958)
  - vii. C 138, Minimum Age Convention (1973)
  - viii. C 182, Worst Forms of Child Labour Convention as Core Convention (1999)
1. Universal Declaration on Human Rights (UDHR) - Article 23 -
  - a. Right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
  - b. Right to equal pay for equal work.
  - c. Right to just and favourable remuneration.

- d. Right to form and to join trade unions.
- 2. International Covenant on Civil and Political Rights (ICCPR) - Article 22 – Right to freedom of association with others including the right to form and join trade unions [Article 22.1]
- 3. International Covenant on Economic, Social and Cultural Rights (ICESCR) - Article 8 –
  - a. Enjoyment of just and favourable conditions of work [Article 7]
  - b. Minimum remuneration
  - c. Fair wages and equal remuneration of work of equal value
  - d. Safe and healthy working conditions
  - e. Equal opportunity for promotion
  - f. Rest, Leisure, working hours and holidays
  - g. Right to form trade unions and join the trade unions [Article 8.1(a)]
  - h. Right to strike [Article 8.1(d)]

“Labour is not a commodity; freedom of expression and of association are essential to sustained progress; poverty anywhere constitutes a danger to prosperity everywhere; all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”

- Declaration of Philadelphia

- 4. Core Conventions of the ILO –
  - i. Freedom of Association and Protection of the Right to Organize Convention (C 87) –
    - “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.” (Article 2)

- “Workers’ and employers’ organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.” (Article 3.1)
- “The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.” (Article 3.2)
- “Workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.” (Article 4)
- “Workers’ and employers’ organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.” (Article 5)

ii. Right to Organize and Collective Bargaining Convention (C 98) –

- “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.” (Article 1.1)
- “Such protection shall apply more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.” (Article 1.2)
- “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.” (Article 4)

## **ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up:**

“All Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and
- (d) The elimination of discrimination in respect of employment and occupation”

(Principle 2)

## **National Standards:**

1. 1978 Constitution –
  - i. Article 14(1)(d) – right to form trade union – government sectors
  - ii. Articles 12, 14(1) (a), (b) and (c) – other fundamental rights
  - iii. Article 15 - limitations
2. Trade Unions Ordinance, No 14 of 1935 as amended
3. Industrial Disputes (Amendment) Act, No. 56 of 1999 – right to form trade unions and engage in trade union activities - semi-government and private sectors (Section 32 A)

## **Right to Form a Trade Union:**

### State Sector –

Freedom to form and join a trade union is a fundamental right under Article 14(1)(d) of 1978 Constitution.

### Semi-government Sector and Private Sector –

- Industrial Disputes (Amendment) Act, No. 56 of 1999 applies.

- Denial of trade union rights by employers, an unfair labour practice, is a criminal offence and subject to fine (increased in 2011).

## **Trade Unions Ordinance:**

### Long Title -

An ordinance to provide for the *registration and control of trade unions*

### Trade Union -

*Trade Union* means any association or combination of workmen or employers, whether permanent or temporary, having among its objects one or more of the following objects:

- (a) The regulation of relations between workmen and employers, or between workmen and workmen or between employers and employers; or
- (b) The imposing of restrictive conditions on the conduct of any trade or business; or
- (c) The representation of either workmen or employers in trade disputes; or
- (d) The promotion or organization or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out, and includes any federation of two or more trade unions.

(Section 2)

### Registration -

Every trade union shall apply to be registered under this Ordinance within a period of three months reckoned from the date of establishment.

[Section 8(2)]

Every application for registration shall be signed by at least seven members of the union.

[Section 9(1)]

If the Registrar is satisfied that a trade union applying for registration has complied with the requirements, he shall register the trade union.

[Section 10]

The Registrar, on registering a trade union, shall issue a certificate of registration.

[Section 11]

Withdrawal or cancellation of registration

[Section 15]

Consequences of Failure to Register or of Withdrawal or Cancellation of Registration –

- Unlawful association and shall cease to enjoy any of the rights, immunities, or privileges of a registered trade union.
- The trade union shall not take part in any trade dispute or promote, organize or finance any strike or lock-out.
- The trade union shall be dissolved.
- No person shall take any part in its management.

[Section 18 (a)-(d)]

Not to be a Trade Union –

An association or combination consisting of – •  
Judicial officers

- Members of the armed forces
- Police officers
- Prison officers
- Members of any corps established under the Agricultural Corps Ordinance shall be deemed not to be a trade union.

[Section 20(2)]

Restrictions to Public Officer's Union –

- The rules of the union shall contain a provision restricting the membership or any office to a department or the class or category of public officers.
- The rules may permit two persons from outside to be members or to hold office, one of such persons being the president or the secretary of the union, and the other being a member of the union.

[Section 21(1)(a)]



- The rules of the union of peace officers or Government staff officers shall contain a provision declaring that the union shall not be affiliated to or amalgamated or federated with any other trade union and declaring that the union shall not have any political objects or political fund.

[Section 21(1)(b)]

#### Rights and Liabilities –

- A trade union shall not enjoy any of the rights, immunities or privileges of a registered trade union until it is registered.

[Section 25]

- Immunity from civil action.

[Section 26]

- Immunity for tortious act.

[Section 27]

- Liability in contract.

[Section 28]

- A registered trade union may sue or be sued.

[Section 30(1)]

#### Immunity –

No action or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

[Section 26]

An action against a trade union or against any members or officers thereof on behalf of themselves and all other members of the trade union in respect any tortious act alleged to have been committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute shall not be entertained by any court.

[Section 27]

### **Collective Bargaining:**

#### Definition -

“Collective bargaining may be defined

as; Negotiations about

- working conditions and terms of employment
- between an ○ employer, ○ a group of employers or ○ one or more employers’ organizations,

on the one hand, and

- one or more representative workers’ organizations on the other,

with a view to reaching an agreement”

- ILO (Geneva) 1960 Conditions for Collective Bargaining:

- a. Encouragement by the State
- b. Freedom of association
- c. Strong and stable trade union movement
- d. Sufficient representation of workers and recognition by employers
- e. Good faith

- S.R.De Silva, *The Legal Framework of Industrial Relations in Ceylon*, PP 66-67

#### Compulsory Bargaining -

No employer shall refuse to bargain with a trade union which has in its membership not less than forty per centum of the workmen on whose behalf such trade union seeks to bargain.

For the purpose of this paragraph the Commissioner of Labour or an officer authorized by him in that behalf may conduct a poll at any work place in

order to ascertain whether at least forty per centum of the workmen on whose behalf the trade union seeks to bargain with the employer, are members of such trade union.

[Section 32 A (g)]

### **Collective Agreements:**

Similar to the Industrial Disputes Act, Collective Agreement is another mechanism for settlement of industrial disputes.

‘Collective Agreement’ means an agreement – (a)  
which is between;

- (i) Any employer or employers, and
  - (ii) Any workmen or any trade union or trade unions consisting of workmen, and
- (b) which relates to the terms and conditions of employment of any workman, or to the privileges, rights or duties of any employer or employers or any workmen any trade union or trade unions consisting of workmen, or to the manner of settlement of any industrial dispute.

[Section 5(1)]

### **Publication in Gazette –**

- Where a collective agreement reduced in writing and signed by both the parties to the agreement may transmit the agreement to the Commissioner, and the Commissioner shall forthwith cause the agreement to be published in the Gazette.
- Provided the Commissioner shall not cause agreement to be so published unless he is satisfied that those terms and conditions are not less favourable than those applicable to any other workmen in the same or a similar industry in such district.

[Section 6]

Comes into Force -

- Every collective agreement shall come into force on the date of such publication or on such date, if any, as may be specified in that behalf in the agreement.
- Such agreement shall continue in force until the end of the period or until the date so specified, unless it ceases earlier to have effect as provided in Section 9.

[Section 7]

Binding -

- Every collective agreement be binding on the parties...and the terms of the agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement.
- the employer in that industry shall observe in respect of all other workmen in that industry terms and conditions of employment which are not less favourable than the terms and conditions set out in that agreement.

[Section 8]

Repudiation -

Any party, trade union or employer, bound by a collective agreement, may repudiate the agreement by written notice sent to the Commissioner and to every other party, trade union and employer bound by the agreement. Provided that any employer, who is a member of a trade union which is, or is included in, a party bound by the agreement, shall not be entitled to repudiate such agreement independently of such trade union. ❖ Repudiation comes in to force from the last date of succeeding month.

Extension -

Where the parties to a collective agreement that is in force are one or more trade unions consisting of employers in any industry and one or more trade unions consisting of workmen in such industry, then, if the Minister

considers that those parties are sufficiently representative- (a) of the employers and the workmen, or

(b) of a class of employers and a class of workmen, or

in such industry in such district the Minister may, in respect of any industry to which any such collective agreement as is referred to in Subsection (1) relates, make an order that every employer, or every employer of any class, in such industry in any district or in Sri Lanka, on whom that agreement is not binding as provided in section 8, shall observe either the terms and conditions set out in that agreement or terms and conditions which are not less favourable than the recognized terms and conditions.

[Section 10]

#### Offences -

Any person who;

- (a) being bound by a collective agreement does any act or aids, abets or incites the commission of any act in contravention of, or fails to comply with, any of the terms or conditions of that agreement
- (b) being an employer bound by a collective agreement keeps in employment any workman on less favourable terms than those specified in that agreement.
- (c) being bound by a collective agreement...being a workman or a person or a person other than a workman, incites or induces a workman to strike or to discontinue employment or work, with a view to procuring the alteration of any of the terms and conditions of that agreement.
- (d) being bound by a collective agreement and being a workman, takes part in a strike or discontinues employment or work, with a view to procuring the alteration of any of the terms and conditions of that agreement.

shall be guilty of an offence.

## Strike:

*Strike* means the cessation of work by body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment.

[Section 2]

## Lockout:

The exclusion of employees by their employer from their place of work until certain terms are agreed to.

- Google Dictionaries

## Right to Strike:

- Not set out explicitly in ILO Conventions and Recommendations or in any legislation.
- Recognized by necessary implication in the labour legislation.

## Legislation that Imply the Existence of a Right to Strike:

1. Section 2(d) of the Trade Unions Ordinance – recognises strikes as an objective of a TU
2. Section 18(b) of the Trade Unions Ordinance – the denial of right to strike if not registered as a TU
3. Section 32(2) of the Industrial Disputes Act – directions to give written notice of intention to commence strike for Essential Industry. “No wildcat strike”.

❖ See;

### Trade Unions –

“Trade union” ...having among its objects one or more of the following objects:

- (d) the promotion or organization or financing of **strikes** or lock-outs in any trade or industry or provision of pay or other benefits for its members during a strike or lock-out.

[Section 2 – Trade Unions Ordinance] Non-

### Registration –

*If any trade union does not apply for registration in due time, or if the registration of any trade union is refused, withdrawn, or cancelled, then;*

*(b) the trade union shall not, nor shall any of its officers or agents on behalf of the union, take part in any trade dispute or promote, organize or finance any **strike** or lock-out, or provide pay or other benefits for its members during a strike or lock-out;*

*[Section 18(b)]*

### Essential Industry –

*No workman shall commence, or continue, or participate in, or do any act in furtherance of, any **strike** in connection with any industrial dispute in any essential industry, unless written notice of intention to commence the strike had, at least twenty one days before the date of the commencement of the strike, been given in the prescribed manner and form by such workman or on his behalf to his employer.*

*[Section 32(2) of the Industrial Disputes Act]*

## 4. Statutory limitations to strike also impliedly recognize right to strike.

### ❖ See also the following provisions:

*Payment of Gratuity Act, Section 5(1) & 20 Industrial Disputes Act, Section 33(1)(a) & (b).*

#### **Interpretation.**

*“completed service” means uninterrupted service and 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...”*

*[Payment of Gratuity Act, Section 20]*

#### **The terms of an award, or order of a labour tribunal.**

*(a) as to wages and all other conditions of service, ... payable or applicable with effect from ...any period of absence by reason of any **strike** or lock-outs; (b) as to the reinstatement in service, .... at the commencement or in the course of any **strike** or lock-out arising out of the industrial dispute;*

*[Industrial Disputes Act, Section 33(1)]*

### Offences –

Participating in or inducing other workman to strike;

- a. when a Labour Tribunal or Arbitral decision is pending or,
- b. to alter a collective agreement, an order made by LT or award made by an Arbitrator;

is an offence.

- Inciting or inducing a workman to **strike** to procure the alteration of a collective agreement or a settlement or an award.

[Section 40 (1) (e) of the Industrial Disputes Act]

- Taking part in a **strike** to procure the alteration of a collective agreement or a settlement or an award.

[Section 40 (1) (f) of the Industrial Disputes Act]

- Taking part in a **strike** to procure the alteration of any order made by a labour tribunal.

[Section 40 (1)(fff) of the Industrial Disputes Act]

- Participating in a **strike** after an industrial dispute has been referred to an industrial court or arbitrator.

[Section 40(1) (m) of the Industrial Disputes Act]

- Inciting a workman to participate in a **strike** after an industrial dispute has been referred to an industrial court or arbitrator.

[Section 40(1) (o) of the Industrial Disputes Act]

### **Disentitlement for Trade Unions:**

#### No Trade Unions for –

An association or combination consisting of:

- (a) judicial officers
- (b) members of the armed forces
- (c) police officers
- (d) prison officers
- (e) members any corps established under the Agricultural Corps Ordinance, shall, notwithstanding anything in its objects, be deemed not to be a trade union, and nothing in this Ordinance shall apply to, or in relation to, any such association or combination.

[Section 20(2)]



### Essential Industry -

No workman shall commence, or continue, or participate in, or do any act in furtherance of, any **strike** in connection with any industrial dispute in any essential industry, unless written notice of intention to commence the strike had, at least twenty one days before the date of the commencement of the strike, been given in the prescribed manner and form by such workman or on his behalf to his employer.

[Section 32(2) of the Industrial Disputes Act]

❖ See;

### Public Security Ordinance Emergency Regulations -

*The President may make such regulations (hereinafter referred to as "emergency regulations") as appear to him to be necessary or expedient --- for the maintenance of supplies and services essential to the life of the community.*

[Section 5(1) of the Public Security Ordinance]

### Essential Service -

*Where the President considers it necessary in the public interest to do so for the maintenance of any service which, in his opinion, is essential to the life of the community, he may, by Order published in the Gazette, declare that service to be an essential service.*

[Section 17(1) of the Public Security Ordinance]

- See the proviso also.

### Essential Public Services Act -

*President may declare services provided by certain Government departments, public corporations, local authorities or co-operative societies to be essential public services.*

[Section 2 of the Essential Public Services Act]

### **Decided Cases:**

- Gunaratne v. People's Bank, (1986) 1 Sri LR 338  
Right to form a union, and become a member of a union – fundamental rights
- CMU v. Ceylon Cold Stores Ltd [(1995) 1 Sri LR 261]  
Probationers have trade union rights

- Kalamazoo Ind. Ltd v. Minister of Labour & Vocational Training (1998) 1 Sri LR 235  
Could engage in strike action for different dispute
  - Best Footwear (Pvt) Ltd v. Aboosally (1997) 2 Sri LR 137  
Strike – last resort
  - Public Nurses Union v. M.Jayawickerema (1988) 1 Sri LR 229 Services were terminated for strike in essential service
  - Rubberite Company Ltd v. Labour Officer, Negombo (1990) 2 SLR 42  
Industrial Disputes Act section 40 – termination of employment
- Go Slow –
- Hayleys Ltd v. De Silva, 64 NLR 130  
Justifies dismissal
  - International Cosmetic Applicators (Pvt) Ltd Case, (1995) 2 SLR 61  
Termination for go slow

## 11. Payment of Gratuity

### Legislation - Related Acts & Amendments:

- Industrial Disputes Act (as amended)
- Payment of Gratuity Act, No.12 of 1983
- Payment of Gratuity (Amendment) Act, No. 41 of 1990
- Payment of Gratuity (Amendment) Act, No. 62 of 1992

### Applicability:

1. Non-payment of gratuity
  - a. Less than 15 workmen – Industrial Disputes Act Section 31B (1) (b) applies.
  - b. More than 15 workmen - Payment of Gratuity Act- Part II Section 5(1) applies.
2. Forfeiture of gratuity

- a. Less than 15 workmen – IS FORFEITURE RELEVANT ??
- b. More than 15 workmen –
  - i. Payment of Gratuity Act- Part II Section 13 applies. ii. Industrial Disputes Act Section 31B (1) (c) relates to application to LT whether forfeiture is done correctly based on the PGA Part II above.

### **Industrial Disputes Act [Section 31B (1)]**

A workman or a trade union on behalf of a workman may make an application to a Labour Tribunal for relief or redress in respect of the following matters:

- (b) the question whether any **gratuity** or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits, where such workman has been employed in any industry employing less than fifteen workman on any date during the period of twelve months preceding the termination of the services of the workman who makes the application or in respect of whom the application is made to the tribunal.
- (c) the question whether the forfeiture of a **gratuity** in terms of the Payment of Gratuity Act, 1983 has been correctly made in terms of that act.

### **Just and Equitable –**

Section 31B (1) (b) is curiously worded. It does say that a workman can apply for gratuity legally due to him but that he can apply in respect of the question whether they are due. The question is one for the tribunal to determine and in the light of section 31C (1) to decide on the basis of what is just and equitable.

Where an application under section 31B is made to a labour tribunal, it shall be the duty of the tribunal 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 such order as may appear to the tribunal to be just and equitable.

[Section 31C (1)]

If section 31B(1)(b) stood alone then the words 'are due' might be interpreted as meaning 'are legally due' but this sub-section must be read with Sub-section 31B(4) and 31C(1).

Any relief or redress may be granted by a labour tribunal to a workman upon an application made under subsection (1) notwithstanding anything to the contrary in any contract of service between him and his employer.

[Section 31B (4)]

Reading it with these sub-sections, it is clear that the tribunal's decision is not to be whether a gratuity or other benefit is legally due but whether it is just and equitable that it should be paid (Consider the length and faithfulness of service to order payment of Gratuity).

- United Engineering Workers' Union v. Devanayagam 69 NLR 289 at 300
- Richard Peiris and Co Ltd v. Wijesiriwardena, 62 NLR 233
- United Engineering Workers Union v. Devanayagam, 69 NLR 289
- National Union of Workers v. Scottish Ceylon Tea Company Ltd, 78 NLR 133
- Y.G.de Silva v. ANCL, (1983) B.L.R, Vol I Part III p. 118
- State Printing Corporation v. Fernando, (1986) CALR Vol 3 p. 107
- Ceylon Cold Stores Ltd v. Sri Nandalochana (1989) 2 Sri LR 254 (Principles relating to payment of gratuity)

## **Payment of Gratuity Act- Part II:**

Every employer who employs or has employed fifteen or more workmen on any day during the period of twelve months immediately preceding the termination of the services of a workman in any industry shall, on termination (whether by the employer or workman, or on retirement or by the death of the workman, or by operation of law, or otherwise) of the services.....of a workman who has a period of service of not less than five completed years under that employer, pay to that workman in

respect of such services, and where the termination is by the death of that workman, to his heirs, a gratuity computed in accordance with the provisions of this Part within a period of thirty days of such termination.

[Section 5(1)]

Surcharge -

Any employer who fails or defaults to pay gratuity on or before the due date shall pay a surcharge.

[Section 5(4)]

Rate of Payment -

- Half a month's wage or salary for each year of completed service.
- Fourteen days' wage or salary for each year of completed service.

[Section 6(2)]

Limitations on Application -

The provisions of section 5 shall not apply to or in relation to a workman-

- (a) employed as a domestic servant or as a personal chauffeur in a private house-hold; or
- (b) entitled to a person under any non-contributory pension scheme.

(Section 7) Certain Companies and Period of Service -

In determining for the purposes of section 5(1) of this Act, whether a workman in any company which takes over the functions of a public corporation or takes over and carries on any Government Owned Business Undertaking has completed five years of service in such company, his period of service with the public corporation or the Government Owned Business Undertaking shall be included.

(Section 7 C)

Recovery of Gratuity -

Recovery of gratuity on defaulter's failure to pay will be made through Magistrate Court.

[Section 8(1)]

Favourable Amount –

Where the gratuity payable to a workman is governed by a collective agreement, award of an Industrial Court or arbitrator under the Industrial Disputes Act or any other agreement, the computation of such gratuity in respect of his services shall be made in accordance with the terms of such collective agreement, award of an Industrial Court or arbitrator or other agreement, as the case may be, provided that the gratuity or terminal benefits set out therein are more favourable to the workman than the gratuity payable under this Act.

[Section 10(1)]

Forfeiture –

Any workman to whom a gratuity is payable under Part II of this Act and whose services have been terminated for reasons of fraud, misappropriation of funds of the employer, wilful damage to property of the employer, or causing the loss of goods, articles or property of the employer, shall forfeit such gratuity to the extent of the damage or loss caused by him.

(Section 13)

Alienation of Business –

Where an employer sells or otherwise alienates any land or establishment within a period of five years of his becoming such employer, the period of service of any workman under that employer shall be added to the period of service of that workman under the new employer in computing the gratuity payable to that workman by the new employer.

(Section 14)

Workman –

‘workman’ means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship or a contract personally to execute any work or labour and includes any person ordinarily employed under any such contract whether

such person is or is not in employment at any particular time, and includes any workman whose services have been terminated.

(Section 20)

Wages or Salary – ‘wages or salary’ means-

- (a) the basic or consolidated wage or salary
- (b) cost of living allowance, special living allowance or other similar allowance; and (c) piece rates.

(Section 20)

### Cases:

- Ceylon Cold Stores Ltd v. Sri Nandalochana (1989) 2 Sri LR 254  
Principles relating to payment of gratuity
- ANCL v. Abeysinghe C/A 2077/2004  
Retirement and extension of service – reasons – breakdown of payment and relevant sections
- Finance Company Ltd v. Kodipillai C/A 1111/2003  
Retirement-employment on contract basis – gratuity for the entire period – acceptance of gratuity after retirement will not affect the claim
- Baur & Co Ltd v. Commissioner General of Labour C.A No: 1033/2005  
Resignation-gratuity withheld- recovery by the Commissioner – 31B (1) (c) is not about legality.
- Saifuddin v. Lawson Pest Control Ltd C.A No: 770/95  
Reimbursement of expenditure in the course of one’s duty – Not included for calculations
- Collettes Ltd v. Commissioner of Labour (1989) 2 Sri LR 06 Dual capacity – managing director and employee
- De Costa v. ANZ Grindlays Bank (1996) B.L.R 30  
Cessation of employment – Reference by the Minister under section 4(1) of the Industrial Disputes Act
- Lanka Marine Services Ltd v. Wimalasena C.A No: 899/98  
Section 7C - Period of service with the prior employer included
- Colombo Metropolitan Bus Company Ltd v. Nimal Saranathissa C.A No: 143/2003

CTB-SLCTB-RTB-Companies – section 7C – Gratuity for entire period



## 12. Workmen's Compensation Ordinance

### Legislation - Related Acts & Amendments:

- Workmen's Compensation Ordinance, No. 19 of 1934
- Workmen's Compensation (Amendment) Act, No. 15 of 1990
- Workmen's Compensation (Amendment) Act, No. 10 of 2005

### Employer -

"employer" includes the Republic of Sri Lanka and anybody of persons whether incorporate or un-incorporate and any managing agent of an employer and the heirs, executors or administrators of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

[Section 2(1)]

### Workman -

"workman" means any person who has entered into or works under a contract with an employer for the purposes of his trade or business in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work or labour and whether the remuneration payable thereunder is calculated by time, or by work done or otherwise....

[Section 2(1)]

Liability - if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this ordinance.

(Section 3)



Non-liability –

The employer shall not be so liable-

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
  - (b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to –
    - (i) the influence of drink or drugs, or
    - (ii) the wilful disobedience to an order expressly given for the safety
    - (iii) the wilful removal or disregard of any safety guard or other device
- (Section 3)

If a workman–

- (a) contracts an occupational disease described in the first column of Part A of Schedule III whilst he is employed in any process described in the corresponding entry in the second column of that part, or
- (b) contracts an occupational disease described in the first column of Part B of the aforesaid Schedule whilst he is in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any process described in the corresponding entry in the second column of that Part.

[Section 4(1)]

Save as provided by section 4, no compensation shall be payable to workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment or the disease is reasonably attributable to the nature of his employment.

(Section 5)

**Amount of Compensation:**

Workmen's Compensation (Amendment) Act, No. 10 of 2005 - Section 6:  
Schedule IV

Recovery –

No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within two years of occurrence of the accident or, in the case death, within two years from the date of death...”

[Section 16(1)]

Liability of the Principal –

Where any principal in the course of or for the purpose of his trade or business contracts with any contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation...

(Section 22)

Surcharge –

Where the amount payable in terms of an award for the payment of compensation is not paid within a period of thirty days from the date of the award, the employer shall be liable to pay in addition to such compensation, a surcharge of a sum equivalent to ten per centum of the amount of such payment.

(Section 23 A)

Appeal –

An appeal on a point of law shall lie to the High Court ...within whose jurisdiction the aggrieved party resides against any order made by the Commissioner.

[Section 48(1)]

Every petition of appeal ...shall be filed in the High Court ...within a period of thirty days reckoned from the date of the order...

[Section 49(1)]

Any workman or employer who is aggrieved by any final order, of a High Court ...may appeal therefrom to the Supreme Court with the leave of that Court first had and obtained.

[Section 53A (1)]

Report to the Commissioner -

Where a workman has been injured as a result of an accident occurring on the business premises of his employer or arising out of and in the course of his employment, and either dies within a period of seven consecutive days next succeeding that on which the accident occurred or absents himself from work for that period, his employer shall report the occurrence and the particulars of such accident to the Commissioner in the prescribed form within a period of fourteen days reckoned from the date on which the accident occurred.

[Section 57 (1)]

One Forum -

Nothing in this Ordinance contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court an action for damages in respect of the injury against the employer or any other person; and no action for damages shall be maintainable by a workman in any court of law in respect of any injury-

- (a) if he has instituted a claim to compensation in respect of the injury before Commissioner; or
- (b) if he has agreed with his employer to accept compensation in respect of the injury in accordance with the provisions of this Ordinance.

(Section 60)

### Cases:

- Alice Nona v. Wickramasinghe, 38 NLR 408 Driver- ignition of petrol – compensation
- Dias v. Jane Nona, 44 NLR 239  
Factory worker – poultry work – stung by a snake – no compensation
- Parupathy v. Additional Controller of Establishments, 64 NLR 522 Refrigerator – water- electrocution – compensation
- Rafina v. Port (Cargo) Corporation (1980) 2 Sri LR 189 Returning from funeral - vicarious liability
- Rahim v. Elisahamy 44 NLR 485  
Conductor –fight –compensation
- Palm Products and Sales Co-operative Society Ltd, Kilinochchi v. Vallikandiah (1984) 1 SLR 230  
Toddy tapper – fall from a tree – co-operative society can employ its members
- De Silva v. Premawathie 50 NLR 506  
Teacher – bitten by a cat – hydrophobia – compensation
- State Distilleries Corporation v. Mary Nona (1981) 2 SLR 223  
Lorry driver – long hours of driving - heart attack –compensation
- Florence Fernando v. Andrews Travel Services (SL) Ltd (2002) 3 SLR 287 Tour guide- ‘in any capacity’ – other permanent employment irrelevant

## 13. Some Labour Legislation

1. Shop and Office Employees’ Act
2. Factories Ordinance
3. Wages Boards Ordinance
4. Employees’ Provident Fund Act
5. Employee’s Trust Fund Act

### 1. Shop and Office Employees’ Act:

- Shops and offices
- Minimum age for employment – 14 years
- Letter of appointment – contract – conditions of employment
- Time limits for payment of salaries: weekly - 3 days; fortnightly - 5 days; fortnight to one month – 10 days – deduction up to 60 %

- Hours of work – Day 8 hours; Week 45 hours
- Females over 18 yrs and males over 16 yrs – restaurants and hotels – 6 p.m. – 10 p.m.
- Females over 18 years
  - Business of a shop or office: 6 p.m. – 8 p.m.
  - Residential hotels and offices of airlines: 6 p.m. – 6 a.m.
- Overtime- 1 ½ times – maximum 12 hours per week
- Weekly holidays – 28 eight hours of work – 1 ½ days holidays
  - Public holidays
  - Full Moon Poya days
  - Casual leave – 7 days
  - Annual holidays – 14 days
- Maternity leave -
  - Eighty four days - live child – no child or one child
  - Forty two days - two or more than two children/ not a live child
  - Woman worker cannot be employed in a work injurious to her or her child during the period of three months prior to confinement

– [Section 18D (1)]

- Woman worker cannot be employed in such work during the period of three months commencing on the date of her confinement

– [Section 18D(2)]

- Employment not to be terminated because of pregnancy or confinement or of illness in consequence thereof

– (Section 18E)

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## 2. Factories Ordinance:

- Safety, health, welfare
- Safety – Safeguarding of machinery, statutory tests, dangerous substances, fire, safe place, gases, dust, fumes, vapours, radiation, noise, protection of eyes, electrical hazards

- (Section 17 – 45)

- Health – Cleanliness, overcrowding, temperature, ventilation, lighting, sanitary conveniences

- (Section 51 – 58 B)

- Welfare – Drinking water, washing facilities, accommodation for clothing, first aid facilities, meal rooms

- (Section 46 – 50)

- Female workers – o Section 68(1) –

“...the pressure of work in any factory may be dealt with by the overtime employment of women and young persons who have attained sixteen years of age but have not attained eighteen years of age:

Provided that the overtime worked by a woman shall not exceed in the aggregate sixty hours in any calendar month and overtime worked by a young person who has attained the age of sixteen years but not attained the age of eighteen years, shall not exceed in the aggregate fifty years in any calendar month”. o Section 68(2A)

–

“An employer shall not engage in overtime (a) a pregnant woman during her pregnancy; and (b) a nursing mother, for a period of one year calculated from the date of the birth of the child; and (c) a woman delivered of a stillborn child, for a period of three months calculated from the date of such still birth, unless she expresses her consent to be engaged in such overtime, in writing”.

#### Notification of Accidents –

Where any accident occurs in a factory which –

- (a) causes loss of life to a person employed in that factory; or
- (b) disables any such person for more than three days from earning full wages at the work at which he was employed; or
- (c) makes any such person unconscious > written notice of the accident > shall forthwith be sent by the occupier or manager or the superintendent > to the District Factory Inspecting Engineer.

[Section 61(1)]

### **3. Wages Boards Ordinance:**

- Tripartite bodies for specific trades

- Terms and conditions of employment
- Time limits for payment of wages: weekly - 3 days; fortnightly - 5 days; fortnight to one month - 10 days.
- Deduction up to 50% from total wages (special circumstances up to 75%)
- Rate of wages
- Rate of overtime
- Working day, working week, working month
- Intervals for meals or rest
- Weekly holidays, public holidays, annual leave

#### 4. E.P.F Act:

- E.P.F – Contribution by the employer and employee
- Contribution
  - Employer 12% - Employee 8% - total earnings
    - Earnings – wages, salary or fees, cost of living allowance, special living allowance, other similar allowances, payments in respect of holidays, cash value of cooked or uncooked food and meal allowance (bonus and overtime payments excluded)
    - Surcharge for delays - 5% - 50%

- Housing Benefits and Medical Treatment

Every member of the Fund who has made contribution for a period of not less than ten years, presently employed and possess not less than three hundred thousand rupees to his credit in his account shall for the purpose housing or medical treatment be entitled to withdraw such amount as does not exceed thirty per-cent of the amount lying to his credit in his individual account.

[Section 23 A (1) of E.P.F Act]

- EPF Re-payment
  - Male 55 years and females 50 years and ceases employment
- Female ceases to be employed in consequence of marriage
  - Within 3 months after resignation (due to marriage)
  - If resigned within 5 years after marriage
- Unfit for work
- Departure from Sri Lanka

- Pensionable appointments

➤ Dayawathie v. Edirisinghe, 2009 B.L.R. 258, (SC)

The Commissioner of Labour had no power to file a certificate under Section 38 (2) without first proceeding under Section 17 and thereafter under Section 38(1) of the Act.

If the Commissioner is of the opinion, that recovery under section 17 of the Act is impractical and inexpedient, and/or where the full amount due has not been recovered by seizure and sale, only then can recovery be made, and only if the Commissioner complies with the certificate issuance requirement of section 38(1) and 38(2).

- Chairman, Employees' Trust Fund Board v. Agro Trading Lanka (Pvt) Ltd, (CA) If the word used 'and' the procedure to follow would have become compulsory. By using the word 'or' the Commissioner is given discretion to file application under Section 17 or 38(1) or 38(2). Therefore, the sections are in the alternative and not in sequence.

## 5. E.T.F Act:

- Contribution - by the employer only.
  - Employer 3% of total earnings
  - Earnings - wages, salary or fees, cost of living allowance, special living allowance, other similar allowances, payments in respect of holidays, cash value of cooked or uncooked food and meal allowance.
- Surcharge for delays - 5% - 50%
- Re-payment
  - Ceasing to be an employee - not more than once in a period of five years except disablement
- Non-contributory benefits - Insurance, financial assistance and awards



## 14. Employment of Women and Child Labour

### Employment of Women:

#### Provisions of Constitution:

- Article 12(1) –  
“All persons are equal before the law and are entitled to the equal protection of the law”
- Article 12(2) –  
“No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or anyone of such grounds...”
- Article 12(4) –  
“Nothing in this article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons”
- Articles 17 and 126(1) –  
The freedoms guaranteed by these provisions could be invoked for judicial remedy when there is an infringement or imminent infringement by executive or administrative action.

#### Night Work:

- Employment of Women, Young Persons and Children, the Factories and the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act No. 32 of 1984
- Employment of Women at night in any industrial undertaking  
– Sections 2A, 2B and 2C of EWYC Act •

Employment of Women at night in a Factory

- Section 67A of Factories Ordinance

Conditions to Night Work - •

Woman's consent

- Written sanction of the Commissioner
- Employed during 6 a.m. – 6 p.m. shall not be employed after 10 p.m.
- Payment of not less than one and a half times the normal payment
- Female wardens
- Restrooms and refreshments
- Not more than ten days during any one month

Shop and Office Employees Act - •

Attained the age of 18 years

- Hotel or Restaurant (6 p.m. - 10 p.m.)
- Residential Hotel – Night Work
- Business of a shop or office ○ (6 p.m. – 8 p.m.)- Section 10(2)

Factories Ordinance -

- The Factories Ordinance as amended by the Amendment Act, No. 19 of 2002 has provisions relating to limitations for overtime work by female workers.

- Section 68(1) -

“...the pressure of work in any factory may be dealt with by the overtime employment of women and young persons who have attained sixteen years of age but have not attained eighteen years of age:

Provided that the overtime worked by a woman shall not exceed in the aggregate sixty hours in any calendar month and overtime worked by a young person who has attained the age of sixteen years but not attained the age of eighteen years, shall not exceed in the aggregate fifty years in any calendar month”.

- Section 68(2A) -

“An employer shall not engage in overtime (a) a pregnant woman during her pregnancy; and (b) a nursing mother, for a period of one year calculated from the date of the birth of the child; and (c) a woman delivered of a stillborn child, for a period of three months calculated from the date of such still birth,

unless she expresses her consent to be engaged in such overtime, in writing”.

### **Maternity Benefits:**

#### Maternity Benefits Ordinance –

- Period for which maternity benefits must be paid – Section 3
  - Twelve weeks – live child – no child or one child
  - Six weeks – two or more than two children/ not a live child
- Employment not to be terminated because of pregnancy or confinement or of illness in consequence thereof
  - Section 10A(1)
- Woman worker cannot be employed in a work injurious to her or her child during the period of three months prior to confinement
  - Section 10B (1)
- Woman worker cannot be employed in such work during the period of three months commencing on the date of her confinement
  - Section 10B(2)
- Nursing intervals for nursing mothers
  - Section 12B

#### Shop and Office Employees Act (As amended by Act No. 44 of 1985) –

- Eighty four days - live child – no child or one child
- Forty two days - two or more than two children/ not a live child
  - Sections 18B(1) and (2)
- Woman worker cannot be employed in a work injurious to her or her child during the period of three months prior to confinement
  - Section 18D (1)
- Woman worker cannot be employed in such work during the period of three months commencing on the date of her confinement
  - Section 18D(2)

- Employment not to be terminated because of pregnancy or confinement or of illness in consequence thereof

– Section 18E

❖ Days/Weeks –

- Shop and Office Employees Act provide leave by considering the number of working days.
- Maternity Benefits Ordinance provides maternity leave by considering number of weeks which include the holidays.

### **Sexual Harassment:**

- Sexual harassment is an offence in Sri Lanka. ○ Section 345 –

“Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person”.

- Penal Code as amended by the Amendment Act, No. 22 of 1995

➤ Kathubdeen v. Republic of Sri Lanka (1998) 3 Sri LR 107

Sexual intercourse is a gratification within the meaning of the Bribery Act.

### **Employment of Child Labour:**

#### **Employment of Women, Young Persons and Children Act (EWYC):**

##### Minimum age for Employment –

- Minimum age for employment – 14 years

–[Section 13(1)]

- Public or private industrial undertaking – 14 years  
- [Section 7(1)]
- Employment at sea (on a vessel) – 15 years  
- [Section 9(1)]
- Public performances endangering life or limb – 18 years  
- [Section 19(1)]
- Training to take part in performances of a dangerous nature – 16 years  
- [Section 20(1)]

“No person under the age of eighteen years shall be employed in any hazardous occupation, which shall be prescribed in accordance with the guidelines specified

Subsection (2)”

- [Section 20A(1)]

“In prescribing hazardous occupations for purpose of the subsection (1), the Minister shall take into consideration the nature or the circumstances in which the occupation is being carried out and the harm that may be caused as a result thereof to the health, safety or morals of a person referred to in subsection (1)”

- [Section 20A(2)]

#### Child Labour Hazardous Occupations –

- Gazette of the Democratic Socialist Republic of Sri Lanka (Extra Ordinary), No. 1667/41 dated 20-08-2010
- Gazette of the Democratic Socialist Republic of Sri Lanka (Extra Ordinary), No. 1695/32 dated 04-03-2011

“A child may not be employed except –

- (a) by his parents or guardian in light agricultural or horticultural work or similar work carried on by members of the same family before the commencement of regular school hours or after the close of school hours;

(b) in any school or other institution supervised by a public authority and imparting technical education or other training for the purpose of any trade or occupation”

- [Section 14(1)]

“Child” means a person who is under the age of fourteen years.

- [Section 34 (1)]

#### Shop and Office Employees’ Act -

“A person who has not attained the age of fourteen years shall not be employed in or about the business of a shop or office”

- [Section 10(1)]

“A person who has not attained the age of eighteen years shall not be employed in or about the business of a shop or office before 6 a.m. or after 6 p.m.”

- [Section 10(2)]

“Any male who has attained the age of sixteen years may be employed in or about the business of a hotel, restaurant or place of entertainment for the period, or for any part of the period, between 6 p.m. and 10 p.m.”

- [Proviso (iv) to Section 10(2)]

#### Factories Ordinance -

“the period of employment in the case of young persons who have not attained the age of sixteen shall not exceed twelve hours in any day and shall neither begin earlier than six o’clock in the morning nor end later than six o’clock in the evening, and in the case of young persons who have not attained the age of eighteen the period of employment shall not end later than eight o’clock in the evening...”

- [Section 67(b)]

- The Factories Ordinance as amended by the Amendment Act, No. 19 of 2002 has provisions relating to limitations for overtime work by young persons.

○ Section 68(1) -

“..., the pressure of work in any factory may be dealt with by the overtime employment of...young persons who have attained sixteen years of age but have not attained eighteen years of age:

Provided that the ... overtime worked by a young person who has attained the age of sixteen years but not attained the age of eighteen years, shall not exceed in the aggregate fifty hours in any calendar month.”

Minimum Wages (Indian Labour) Ordinance -

“No employer shall knowingly employ for work on estates any child below the age of fourteen years, or knowingly permit such child to be employed.”

- (Section 4)

The Penal Code -

- “Any person who employs any child to appear or perform, in any obscene or indecent exhibition or show or to appear in, any obscene or indecent photograph or film commits an offence”.

- [286A(1)(a)]

- Causing or procuring children to beg is an offence.

- [Section 288(1)]

- Hiring or employing children to traffic in restricted articles is an offence.

- [Section 288 B(1)]

- Sexual exploitation of children is an offence.

- [Section 360B(1)]

- Debt bondage, serfdom, forced or compulsory labour, slavery and recruitment of children for use in armed conflict are offences.

- [Section 358A(1)]

- Recruiting, transporting, transferring, harbouring or receiving a child or doing any other act whether with or without the consent of such child for the

purpose of securing forced or compulsory labour or services, slavery, servitude...are offences of trafficking.

- [Section 360C(1)(c)]

❖ *Child* – under eighteen years of age



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