

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

In the matter of an Application for a mandate in  
the nature of a Writ of *Certiorari* under and in  
terms of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0379/2019**

**Mahaweli Reach Hotels PLC,**  
No. 35, P. B. A. Weerakoon Mawatha,  
Kandy.

**Petitioner**

**Vs.**

- 1. A. Wimalaweera,**  
Commissioner General of Labour,  
Department of Labour,  
Labour Secretariat,  
Colombo 05.
- 2. P. K. Sanjeewani,**  
Assistant Commissioner of Labour,  
Department of Labour,  
Labour Secretariat,  
Colombo 05.
- 3. R. M. A. B. Rajanayake,**  
Kotuwegedara Road,  
Madanwala,  
Haguranketha.

4. **E. R. M. R. M. T. Jayawardena,**  
No.1/8, Aluviharaya,  
Matale.
5. **K. P. A. Abeythileka Bandara,**  
No.33, Imbulpitiya,  
Karagahahinna(Via Matale)
6. **B. A. M. Kuda Banda,**  
No.85/A,  
Bomaluwa Road,  
Watapuluwa,  
Kandy.
7. **R. M. Ranbanda,**  
Malulla,  
Gonakantenna, Hanguranketha.
8. **W. M. Anura Bandara,**  
No.286, Delgasgoda  
Alawathugoda.
9. **I. D. Hettiarachchi,**  
No.3/2, Uggahakumbura  
Pujapitiya.
10. **E. M. A. S. K. S. J. Loku Bandara,**  
No.50, Elkaduwa Road,  
Wattegama.
11. **P. U. S. R. Manjula Nishantha Nandasiri,**  
No.65/15, Hewaheta Road  
Talwatte, Kandy.
12. **W. W. M. S. Weerasekara,**  
No.36, New Town,  
Kundasale.

13. **S. M. S. Samarakoon,**  
No.11, Wathurakumbura,  
Muruthalawa.
14. **W. S. P. Gamini Premanayake,**  
No.59- A,Bogahakumbura,  
Jambugahapitiya.
15. **W. A. Sisira Kumara,**  
No.190-B, Pahala Eriyagama,  
Peradeniya.
16. **R. M. P. Padmalal,**  
No.174, Angammana,  
Gampola.
17. **W. M. Karunaratne,**  
No.99, Bomaluwa Road,  
Watapuluwa,  
Kandy.
18. **C. G. Balasinghe,**  
No.92, 3<sup>rd</sup> Lane,  
Agalawatte Road,  
Matale.
19. **Suranga Kumara Rajapaksa,**  
No.75, Panorama Park,  
Mullegama,  
Ambatenna.
20. **D. G. A. Tilakasiri,**  
No.19/2, Dematagahadirama  
Kahalla,  
Katugasthota.
21. **W. G. Amarasinghe,**  
NO.187/3, Wehigaldeniya,  
Athulgama,  
Thalathuoya.

## **Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**S. U. B. KARALLIYADDE, J.**

Counsel: Thilan Liyanage, instructed by Lakni Silva for the Petitioner.

Ms. Chaya Sri Nammuni, DSG with N. De Zoysa, SC for the Respondents.

Argued on: 02.08.2023.

Written Submissions on: 27.09.2023 by the Petitioner.  
05.02.2023 by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Decided on: 26.02.2024.

### **MOHAMMED LAFFAR, J.**

The 3<sup>rd</sup> to 21<sup>st</sup> Respondents have been serving as employees in the Petitioner Company. The Petitioner Company had terminated the services of the said Respondents on 05-05-2019. Being aggrieved by the said termination, the said Respondents lodged complaints with the 1<sup>st</sup> Respondent, the Commissioner of Labour. The 1<sup>st</sup> Respondent, on 01-12-2009, held that the said Respondents' services have been unlawfully terminated in terms of the provisions of the Termination of Employees (Special Provisions) Act No. 45 of 1971 (as amended) and ordered that such Respondents be reinstated with back wages.

Being aggrieved by the said Order, the Petitioner invoked the Writ jurisdiction of the Court of Appeal in case bearing No. CA. Writ-167/2010. The Court of Appeal on 12-12-2018, quashed the decision of the 1<sup>st</sup> Respondent to reinstate the 3<sup>rd</sup> to 21<sup>st</sup> Respondents. However, the Court of Appeal upheld the findings of the 1<sup>st</sup> Respondent that the termination of the services of the said

Respondents was contrary to the provisions of the Termination of Employees (Special Provisions) Act. Accordingly, the Court of Appeal directed the 1<sup>st</sup> Respondent to hear the parties and make a suitable decision within four months of the Judgment as to the compensation that should be paid to the said Respondents in terms of the provisions of the said Act. The Judgment of the Court of Appeal, in this regard, is reproduced as follows;

*“In these circumstances, this Court, while upholding the decision of the 1<sup>st</sup> Respondent contained in P3, that the termination of services of the 4<sup>th</sup> to 22<sup>nd</sup> Respondents is contrary to the provisions of the Termination of Employees (Special Provisions) Act No. 45 of 1971 (as amended), proceeds to issue a Writ of Certiorari quashing only that part of P3, by which the 1<sup>st</sup> Respondent ordered that the 4<sup>th</sup> to 22<sup>nd</sup> Respondents be reinstated in service with back wages. This Court directs the 1<sup>st</sup> Respondent to hear the parties and make a suitable decision within four months of this judgment, on the compensation that should be paid to the 4<sup>th</sup> to 22<sup>nd</sup> Respondents under and in terms of section 6 of the Termination of Employees (Special Provisions) Act No. 45 of 1971 (as amended).”*

Accordingly, after inquiry, the 1<sup>st</sup> Respondent made the impugned Order dated 29-07-2019, directing the Petitioner to pay compensation to the 3<sup>rd</sup> to 21<sup>st</sup> Respondents as contained in P3. The 1<sup>st</sup> Respondent has come to a finding that the termination of employment of the said Respondents has occurred on the date of the judgement of the Court of Appeal in case bearing No. CA. Writ-167/2010, namely 12-12-2018. Being aggrieved by the said decision, in the instant Application, the Petitioner has invoked the Writ jurisdiction of this Court seeking, *inter-alia*, a Writ of Certiorari quashing the decision of the 1<sup>st</sup> Respondent (P3) on the basis, *inter-alia*, that the date of termination of employment of the said Respondents should be 05-05-2009.

The contention of the learned Counsel appearing for the Petitioner is that the decision of the 1<sup>st</sup> Respondent that the date of termination was the date of the judgment of the Court of Appeal in case bearing No. CA. Writ-167/2010, is *ultra-vires*, arbitrary, illegal and capricious and whereas the date of termination should be on 05-05-2009.

The central issue which has to be determined by this Court is whether the termination of employment of the said Respondents is 05-05-2009 or 12-12-2018.

In this regard, I refer to the observation made by the Court of Appeal in **Kapila Budhapriya Weerasingha and others Vs. V.B.R.K. Weerasingha and others**<sup>1</sup>

*“When termination is unjustified, the contract of service must be treated as unbroken and the Petitioners must be deemed to have been in service without any break. The Court of Appeal confirmed the fact of unjustified termination in 2011 and it follows that the Petitioners would have continued in service till 2011 unless some of them retired prior to 2011.”*

In light of the above decision, it is abundantly clear that the contract of service must be treated as unbroken, the Respondents must be deemed to have been in service without any break when the Court decides that the termination of employment is unlawful. Thus, in this Application, despite the fact that the date of termination was on 05-05-2019, as the Court of Appeal in case bearing No. CA. Writ-167/2010 has decided on 12-12-2018 that the purported termination is unlawful, undisputedly, it is established that the 3<sup>rd</sup> to 21<sup>st</sup> Respondents have been in unbroken service till 12-12-2018. As such, I hold that the finding of the 1<sup>st</sup> Respondent that the date of termination of services of

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<sup>1</sup> CA-Writ Application No. 192/2013. CA Minute of 23-05-2019.

the 3<sup>rd</sup> to 21<sup>st</sup> Respondents should be the date of the judgement of the Court of Appeal, namely 12-12-2018 is veracious and justifiable.

The Petitioner did not adduce any evidence in proof of salaries of the said Respondents. In this scenario, the 1<sup>st</sup> Respondent, in terms of the provisions of the National Minimum Wages of Workers Act No. 3 of 2016, has taken the base salary of the employees as Rs. 10,000/- per month in calculation of the compensation. Under section 3 (1) of the said Act, the minimum monthly wage for all workers in any industry of service shall be Rs. 10,000/-. Moreover, the 1<sup>st</sup> Respondent has adhered to the relevant compensation formula set out in Extra Ordinary Gazette No. 1384/7 dated 15-03-2005.

It is to be noted that although the learned Counsel for the Petitioner took up the position that it is not correct to pay compensation to the employees who have retired before 12-12-2018, as the Petitioner failed to submit the names of such employees to the 1<sup>st</sup> Respondent, the said contention is devoid of merits.

For the foregoing reasons, I hold that there is no basis to review the decision of the 1<sup>st</sup> Respondent marked as P3. Thus, the Application is dismissed with costs fixed at Rs. 75,000/- payable by the Petitioner to the 3<sup>rd</sup> to 21<sup>st</sup> Respondents.

*Application dismissed with costs.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

*I Agree*

**JUDGE OF THE COURT OF APPEAL**