

**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 Writ of *Certiorari* under and  
in terms of Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.

Lanka Electricity Company (Private)  
Limited (LECO),  
No. 411, E.H. Cooray Building, Galle Road,  
Colombo 03.

**PETITIONER**

**Vs.**

**Court of Appeal Case No:**  
**CA/WRIT/ 753/23**

1. B.K. Prabhath Chandrakeerthi,  
Commissioner of Labour,  
Mehewara Piyasa, Labour Secretariat,  
Narahenpita, Colombo 05.
2. H.G.P.K. Deepasika Dharmadara alias  
A.A. K. Deepashika Dharmadasa,  
Kabalumulla, Yatiyantota.
3. W.P.M.P. Wijayawardena,  
Assistant Commissioner General of  
Labour,  
Colombo East,  
Mehewara Piyasa, Labour Secretariat,  
Narahenpita, Colombo 05.
4. Hon. Minister Manusha Nanayakkara,  
Minister of Labour and Foreign  
Employment,  
Mehewara Piyasa,  
Narahenpita, Colombo 05.

5. M.G.D.U.K. Mapa Pathirana,  
The Secretary, Ministry of Labour,  
Mehewara Piyasa, Labour Secretariat,  
Narahenpita, Colombo 05.
6. R.A.M. Adhikari,  
Registrar, Labour Court, Labour  
Secretariat,  
Narahenpita, Colombo 05.
7. K.W. Ranjan Sisira,  
No. 1144/5/A, Liyanagoda Road,  
Kottawa, Pannipitiya.

### **RESPONDENTS**

**Before:** S.U.B. Karalliyadde, J  
Mayadunne Corea, J

**Counsel:** Saman Galappathi instructed by Isuru Perera for the Petitioner.  
P. Jayasuriya SC for the 1<sup>st</sup> to the 6<sup>th</sup> Respondents.  
R. Ariyawansa for the 7<sup>th</sup> Respondent.

**Supported on:** 27.08.2024

**Decided on:** 30.09.2024

### **Mayadunne Corea J**

The Petitioner filing this Application sought, among other things, the following reliefs:

*“(b) Make an Order to issue a mandate in the nature of Writ of Certiorari quashing the decision contained/reflected in the gazette notification marked ‘P22’,*

*(c) Issue a mandate in the nature of a Writ of Certiorari quashing the decision contained/reflected in gazette notification marked ‘P22’”*

When this case was supported, the Petitioner submitted to Court that he was not supporting for relief (d) and was only supporting for notice relating to reliefs (b) and (c).

Facts of the Petitioner's case are briefly as follows. The 7<sup>th</sup> Respondent had been an employee of the Petitioner. Pursuant to a circular dated 29.07.2005, which had been amended by the circular dated 02.10.2012, the 7<sup>th</sup> Respondent had been called for an interview for his promotion. However, subsequent to a dispute between the high officers of the Petitioner and the 7<sup>th</sup> Respondent, there had been an inquiry and the 7<sup>th</sup> Respondent had been demoted. The 7<sup>th</sup> Respondent being aggrieved by the findings of the inquirer had appealed to the Commissioner of Labour and the dispute had been referred for an industrial arbitration. After a lengthy arbitration, the arbitrator had delivered his Order which was published in the Gazette marked P22. Being aggrieved by the said Order, the Petitioner has filed this Writ Application. It is pertinent to note that the parties were not at variance on the following grounds.

- As per the circular dated 29.07.2005 and amending circular dated 02.10.2012, the 7<sup>th</sup> Respondent was entitled to face an interview or written test for his promotion if he has complied with the requirements of the circular.
- The 7<sup>th</sup> Respondent had been given his promotion to grade M2 with effect from 03.07.2007 (P6). The 7<sup>th</sup> Respondent was entitled to be promoted to the next grade (M3) with effect from 03.07.2011. An interview had been held dated 11.02.2014 (paragraph 5(e) of the Petition).
- Before the interview results were released, a preliminary investigation had commenced against the 7<sup>th</sup> Respondent for a misconduct which resulted in a charge sheet being issued to him and after an inquiry, he had been demoted. Thereby his remuneration was reduced from M2 salary scale to A5 salary scale (P8).

### **Respondent's Objection**

When this case was taken up for support, there was an appearance on behalf of the 7<sup>th</sup> Respondent, who with the permission of Court had filed a limited objection whereby they had taken several preliminary objections. The 7<sup>th</sup> Respondent had filed the said limited objection by way of a motion dated 29.03.2024. Among other objections, the 7<sup>th</sup> Respondent raised a preliminary objection and moved for the Petition to be dismissed in *limine* without notice being issued for non-compliance with Section 31DDDDD of

the Industrial Disputes Act No. 14 of 1947 as amended. The crux of the objection is that the Petitioner has failed or neglected to deposit security in terms of Section 31DDDDDD of the Industrial Disputes Act as amended by Act No. 22 of 2022. It was also contended that there is an undue delay in the Petitioner coming before the Court. This Court will consider the Petitioner's submissions and the objections of the 7<sup>th</sup> Respondent together.

The Petitioner submitted that the decision of the arbitrator, among other things, is *ultra vires*, biased, in excess of the mandate for the matter in dispute, in excess of the dispute and matter referred for arbitration.

Petitioner in reply to the preliminary objection submitted that they have subsequently deposited the security and a copy of the said certificate of the Commissioner General of Labour has been filed by way of a motion. The said letter bears the date 09.04.2024.

This would be an appropriate time to consider Section 31DDDDDD of the Industrial Disputes Act. This Section had been brought to the Industrial Disputes Act by way of an amendment by the amending Act No. 22 of 2022. The said Section states as follows.

***“31DDDDDD - Employer to furnish a security in respect of an application to the Court of Appeal.***

- (1) Where an application is preferred by an employer to the Court of Appeal, for the issue of an Order in the nature of a writ, against an award made by an arbitrator under section 17(1) or by an industrial court under section 24, the Court of Appeal shall entertain such application upon furnishing a security by such employer, in cash to the Commissioner-General, where such award which is subject to such application directs the payment of a sum of money to the worker, of an amount equal to such sum.*
- (2) The Commissioner-General shall cause to be deposited the sum as specified in subsection (1) in an account bearing interests, maintained by the Commissioner-General, in any approved bank in Sri Lanka.*
- (3) Every application preferred under this subsection, shall be supported by a certificate under the hand of the Commissioner-General to the effect that the security as specified in subsection (1) has been duly furnished by such employer.”*

As per Section 31DDDDDD(1), for the Court of Appeal to entertain an Application by an employer against the award made by an arbitrator under Section 17(1) or by an

Industrial Court under Section 24, the legislature has imposed the compliance of two conditions as follows. The employer is required to furnish a security in respect of the said appeal. The Section further states that the security deposit should be of an amount equal to the sum in the award.

Under Subsection (3) it is a requirement that an Application which is preferred under this Section should be supported by a certificate under the hand of the Commissioner General to the effect that the security as specified in Subsection (1) has been duly furnished by the said employer.

Hence, the procedure of tendering an Application for Writ by an aggrieved party in this case the employer against an industrial arbitrator's award is stipulated under Section 31DDDDD. Both Counsel conceded that for an Application to be entertained by the Court of Appeal the requirement of depositing the security and in support submitting the certificate of the said deposit under the hand of the Commissioner General is a requirement.

There is no doubt and the Petitioner himself conceded that when this Application was filed the Petitioner has failed to deposit the said sum nor had he annexed the certificate of the Commissioner General to the effect that security has been deposited.

It is pertinent to note that when this case was taken up on 27.03.2024 for support, the Counsel appearing for 1<sup>st</sup> to 6<sup>th</sup> Respondents and the Counsel appearing for the 7<sup>th</sup> Respondent took up this objection, the objection taken was "In terms of Section 31DDDDD of the Industrial Disputes Act as amended by Act No. 22 of 2022, the party who seeks to challenge the arbitral award before the Court of Appeal is obliged to furnish the security in terms of the award as a condition precedent of filing such Application and this has not been complied" and we find that this preliminary objection is more elaborated in their limited objections dated 29.03.2024. At this stage, the learned Counsel appearing for the Petitioner conceded that the deposit had not been made and moved for a further date to support the Application.

The Petitioner had filed this Writ Application on 28.11.2023. In the said Application, nowhere is it pleaded that the security has been deposited, nor has the Petitioner pleaded and annexed the certificate of deposit issued by the Commissioner General.

In his submissions, in supporting the Application on 27.8.2024, the Petitioner submitted that they have deposited the said sum and have tendered to Court the certificate of the Commissioner General which is long after the objection was taken. In fact, as per the submissions of the learned Counsel appearing for the Petitioner, the deposit was made only on 02.04.2024. The certificate of the Commissioner General appears to be dated 09.04.2024 which has been filed by a motion dated 29.05.2024. Hence it is clear that the Petitioner has failed to comply with Section 31DDDDDD at the time of filing this Application. The Petitioner has complied with the provision only after a substantial delay of nearly five months and subsequent to the objection raised by the Respondents.

### **Nature of Section 31DDDDDD**

Section 31DDDDDD is a unique Section as it lays down the procedure and invokes the Writ jurisdiction of the Court of Appeal. In my view, as per the wording of Section 31DDDDDD subsections (1) and (3), it is clear that the intention of the Legislature is to make the security deposit and the certification of the Commissioner General a mandatory provision before the invocation of the jurisdiction of the Court of Appeal.

I came to this conclusion upon considering the wording used in the Section. The wording salient to my coming to the above conclusion is reproduced herewith;

***“the Court of Appeal shall entertain such application on furnishing a security...”.***

Further, it goes on to state under subsection (3)

***“every application preferred under this subsection shall be supported by a certificate under the hand of the Commissioner General to the effect that the security as specified in subsection (1) has been duly furnished by such employer”.***

Even though it appears that there is no time limit in the number of days specified for the security deposit, the words used by the Legislature clearly demonstrate that the security should be deposited and the certificate by the Commissioner General of such deposit being made, should accompany the Application to the Court of Appeal. This is amply demonstrated when it is stated that *“every application preferred under this subsection shall be supported by a certificate”*. Hence, in my view, there is a condition imposed, which needs to be complied before the Application is entertained by the Court of Appeal.

Hence, for the Court of Appeal to entertain an Application for the exercise of its Writ jurisdiction under this Section, it is mandatory that the Petitioner deposits the security, and the Application to the Court is supported by the certificate of deposit. In coming to the above conclusion this Court has considered the judgements of ***Wimalasiri Perera and others v. Lakmali Enterprises Diesel and Petrol Motor Engineers and others*** [2003] 1 SLR 62 which concerned an appeal against the award of a Labour Tribunal. It was held that the deposit of security is mandatory. The same was held in the case of ***Linea Aqua (Pvt) Ltd v. P. Chinthaka Lakdewa De Silva*** SC Appeal No. 178/2018 dated 05.07.2019

As per the facts of this case, it is clear that the Petitioner has failed to comply with these mandatory provisions. It is the view of this Court that the Petitioner's failure to comply with this mandatory provision is fatal to his Application and the Respondent's preliminary objection is well founded.

#### **Specific grounds to impugn the decision**

As correctly submitted by the Respondents, the Petitioner's Counsel failed to impugn the arbitrators award on any specific ground. It is observed that other than what is pleaded in paragraph 18 of the Petition, the learned Counsel has failed to address this Court or demonstrate to this Court any *prima facie* evidence of how or on what grounds it is pleaded that the Order of the arbitrator is *ultra vires* or biased. I am mindful of the fact that this case is still at support stage. Nevertheless, in my view the Petitioner has *prima facie* failed to substantiate his contention as to how the impugned Order becomes *ultra vires* or biased or in excess of the mandate of the arbitrator.

It is also observed that the award had been given and it was published in the Gazette No. 2335/12 dated 06.06.2023 (P22). Thereafter, the Petitioner has sent a notice of repudiation on 03.08.2023 (P23) and as the address had been erroneous a subsequent notice dated 7.8.2023 (P24) had been dispatched. It is observed that the notice of repudiation too had been sent two months following the publication of the Gazette containing the award. This Application is dated 28.11.2023. Hence, the contention that the Petitioner has invoked the jurisdiction of this Court only after the lapse of five months from the date of publication of the Gazette.

In *Dissanayake v. Fernando* (1986) 71 NLR 356 His Lordship Weeramantry J., enunciated that,

*"where there has been a delay in seeking relief by way of certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court".*

However, this Court observes that the Petitioner has failed give any valid reasons for his delay in coming to Court.

Even in the case of *Gunasekera v. Weerakoon* 73 NLR 262 His Lordship Sirimane J., held that

*"the application should be refused because the Petitioner was guilty of undue delay in making the application. In the said matter, a delay of 7 months was considered to be "too long".*

And in *Wijegoonawardena v. Kularatne* 51 NLR 453 a delay of five months was considered a delay.

### **Conclusion**

After considering the submissions of all parties, I am of the view that the Petitioner has failed to establish a *prima facie* case and also this Court is inclined to uphold the preliminary objections of the Respondent. Accordingly, for the reasons stated above, this Court is not inclined to issue formal notice and proceeds to dismiss this Application.

**Judge of the Court of Appeal**

**S.U.B. Karalliyadde, J**

I agree

**Judge of the Court of Appeal**



