

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

In the matter of an Application for mandates in the nature of Writs of Certiorari, in terms of Article 140 of the Constitution.

The Sri Lanka Transport Board.  
No 200, Kirula Road,  
Narahenpita,  
Colombo -05

**PETITIONER**

CA (Writ)) Application: No.232-2017

-vs-

1. D.P.S. Weerasinghe  
Assistant Commissioner of Labour,  
No 131/1, Old Road,  
District Labour Office,  
Kalutara-South
2. R.W.M. Podinilame  
Deputy Commissioner of Labour,  
(Western Province II)  
No 131/1, Old Road,  
District Labour Office,  
Kalutara-South
3. D.D.L. Edward  
Koshena,  
Payagala

**RESPONDENTS**

**Before:** Janak De Silva J.

**&**

**N. Bandula Karunarathna J.**

**Counsel:** Lal Wijayanayaka, AAL with Ranjith Ranawaka AAL and Kosala Perera AAL for the Petitioner.  
Nayomi Kahawita SC for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.  
Thushara Dissanayaka AAL for the 03<sup>rd</sup> Respondent.

**Argued on:** 14/02/2020

**Written Submissions:** By Petitioners on 30.05.2019  
By 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 06.06.2019  
By 3<sup>rd</sup> Respondents on 12.07.2019

**Judgment on:** 16/11/2020

**N. Bandula Karunarathna J.**

The above styled Writ Application was filed by the Petitioner, namely, Sri Lanka Transport Board, seeking the main substantive relief, viz., a Writ of Certiorari to quash the Order of the 1st and 2nd Respondents dated 26-04-2017 marked as P4.

The 3<sup>rd</sup> respondent was an employee of the Petitioner Board from 03/06/1977 and retired from service on 10th July 2010 on reaching the age of retirement. Thereafter his service was extended by one year. He was employed from 11 July 2010 to 10th July 2015 on a contract basis. The 3<sup>rd</sup> respondent made a complaint dated 8 September 2015 to the Asst. Commissioner of Labour at the District Labour Office at Kalutara and claimed that the 3<sup>rd</sup> respondent be declared entitled to:

- i. The benefits of continuous unbroken service from 3rd June 1977 to 10<sup>th</sup> July 2015.
- ii. Order the payment of annual increments from 2010 and the increased wages due under the budget proposals from 2013. (Vide complaint marked P1)

The 3<sup>rd</sup> respondent further claimed by letter dated 8 January 2015 (marked P1(1)) that he be declared entitled to:

- iii. Gratuity for the whole period.
- iv. EPF payment for the period from 11<sup>th</sup> July 2010 to 10th July 2015.

The petitioner submitted their response to the complaint, to the Asst. Commissioner of Labour by letter marked P2 and indicated that :

- v. It is not possible to pay salary increments for the period during which the 3<sup>rd</sup> respondent was employed on a contract basis.
- vi. It is not possible to treat the period of service on contract basis as a continuous period of service.

- vii. It is possible to pay the EPF payments due for the period payable by the Petitioner Board.
- viii. It is possible to pay gratuity for the whole period from 3<sup>rd</sup> June 1977 to 10<sup>th</sup> July 2015.

The Petitioner Board has explained in their statement marked P3, that according to Human Resources Circular No. 15 of 2011 of the Petitioner Board, based on Public Enterprises Circular No. 60, the age of optional retirement for employees of the Board on 1st May 2011 or after will be 55 years and the period of service on extension of service will be upto 57 years. As the 3<sup>rd</sup> respondent was not in service as on 1<sup>st</sup> May 2011 he will not be entitled to claim benefits under Public Enterprises Circular No. 60.

After the conclusion of the inquiry held by the 1<sup>st</sup> respondent, the 2nd respondent by his order dated 26th April 2017 (marked P4) has held:

- ix. The 2nd respondent has decided that it is proper to allow the claim of the 3<sup>rd</sup> respondent and
- x. Further has ordered that the petitioner comply with the directions given under items 1 to 5 of the order and report to the 1st respondent within 14 days. (Vide paras P4(a) and P4(b) of P4)

The Petitioner disputes the said order and states that it was

- I. Made by the 2nd respondent whereas the inquiry was held by the 1<sup>st</sup> respondent.
- II. On the face of the order, It is not based on a consideration of the rights of parties and not based on material placed before the 1<sup>st</sup> respondent at the inquiry.
- III. Made without considering the main issues at the inquiry, that is, whether the 3<sup>rd</sup> respondent is legally entitled to his claim and the relevance of Public Enterprises Circular No. 60 in respect of the 3<sup>rd</sup> respondent.

The Petitioner therefore states that the 2nd respondent has failed to consider the fact that the 3<sup>rd</sup> respondent has reached the age of 55 years and retired from service before 1st May 2011 and hence has no right to claim an extension of service. The Petitioner further states that the 2nd respondent has also failed to consider that after 11<sup>th</sup> July 2011 the 3rd respondent has worked on a contract basis and that his contract was being extended from time to time by periods of 6 months and 12 months.

The Petitioner states that the Petitioner by letter marked P13 inquired from the department of Public Enterprises whether this circular applies to a person who is serving on a contractual basis and has being advised in the letter marked P14 that, if a person is serving on a contract basis the person is bound by the terms of the contract. Further the 2nd respondent has failed to consider that under Section 44B(c) of the Industrial Disputes Act, a suit for the recovery of any sum due under the Industrial Disputes Act from any employer to any workman shall be maintainable if it is instituted within two years after the sum is due.

The Petitioner also states that the claim of the 3rd respondent is prescribed under Section 44B(c) of the Industrial Disputes Act. Therefore, the Petitioner embarks on the concept that the order marked P4 is ultra vires, unreasonable and made in violation of the rules of natural justice. Being aggrieved by the said order, the Petitioner preferred this writ application to the Court of Appeal to quash it.

In response to the aforesaid submissions of the Plaintiff, the 3<sup>rd</sup> Respondent states that according to the letter of the Chief Human Resources Manager of the Board dated 11.12.2015, marked P2, in the computation of gratuity due to the 3rd Respondent the entire period of his service from 03.06.1977 to 10.07.2015 has been considered continuous and without break in service.

Therefore, the 3<sup>rd</sup> Respondent states that the 2nd Respondent, Deputy Commissioner of Labour, has made the order dated 26.04.2017 marked "P4", after considering properly all documentary evidence produced by the parties in the inquiry. Therefore, it is not arbitrary, unreasonable or perverse. Accordingly, the 3<sup>rd</sup> Respondent states that the order sought to be quashed is entitled to stand undisturbed and therefore, this application may be dismissed with cost.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submit that the 3rd Respondent was an Employee of the Petitioner and was recruited as Security Guard on 03-06-1977. (vide: X1) The 3rd Respondent reached the age of retirement of 55 years on 10-07-2011 and was retired from service by letter marked as X2. Thereafter, the 3rd Respondent was given a one-year service extension by the Petitioner, with effect from 11-07-2010 to 10-07-2011. (X3). During the aforesaid extended service period of the 3rd Respondent, the Public Enterprise (PE) Circular No: 60 was issued and came into operation with effect from 01-05-2011. This PE Circular No 60 made 55 years as the optional age of retirement and 60 years as the mandatory age of retirement and also entitled an employee to continue in service without applying for service extension beyond the optional age of retirement of 55 years till 57 years. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents also submit that this PE Circular No 60 should be applicable to the 3rd Respondent as at the point of time this Circular came into operation on 01-05-2011, the 3rd Respondent was serving an extension of service beyond the optional age of retirement of 55 years and had not reached 57 years of age.

Subsequent to a thorough analysis of the facts of the case, it is pertinent to note that the Petitioner by letter dated 18-09-2012, (X6) had informed the 3rd Respondent that he had been retired from service upon completion of 55 years on 10-07-2010 and taking into account the exigency of service he was placed on contract basis in service from 11-07-2010 till 10-01-2013. It was also mentioned in said letter marked as X6 that the said extended service period shall be considered as a service period without a break in service. Thereafter from 10-11-2013 onwards aforesaid contractual period was extended from time to time until the 3rd Respondent reached the mandatory age of retirement of 60 years (vide: P7, P8 P9 P10 P11 and P12)

I further note that the above-mentioned letters of extension of service marked as X6 of P1, P7, P8 and P9 were submitted to be clearly in contravention of the provisions of the PE Circular No 60 (1R1). While the 3rd Respondent was serving his contractually extended service period, in the year 2013, another Public Enterprise Circular No 01/2013 was issued . This PE Circular No 01/2013 entitled an Employee to serve till the mandatory age of retirement of 60 years without applying for any extension of service upon reaching the optional age of retirement of 55 years. The aforesaid PE Circular No 01/2013 was adopted by the Petitioner

on 12-03-2015 by Sri Lanka Transport Board Circular No 01/2015 which came into effect on 12-03-2015. (vide : X10)

It is also important to note that at this point of time when the aforesaid PE Circular No 01/2013 was adopted by the Sri Lankan Transport Board Circular No 01/2015, the 3rd Respondent had not reached the mandatory age of retirement of 60 years and was serving an extended service period without a break in service on a contract. (vide P12). Item 04 in the aforesaid Sri Lanka Transport Board Circular No 01/2015 which further buttresses the position maintained by the Respondents that this Circular No 01/2015 ( i.e. PE Circular No 01/2013) too should be applicable to the 3rd Respondent . The said item 4 of Transport Board Circular No 01/2015 states as follows:

"ඉහත කී රාජ්‍ය ව්‍යාපාර චක්‍රලේඛයට පටහැනිව විශ්‍රාම ගත්වා නැවත කොන්ත්‍රාත් පදනම යටතේ හෝ වෙනත් කුමන පදනමක් යටතේ හෝ තවදුරටත් එම සේවකයින්ගේ සේවය ලබාගෙන ඇත්නම් ඔවුන්ගේ විශ්‍රාම ගැන්වීමේ ලිපිය හා පත්කිරීම සම්බන්ධ ලිපි බලරහිත කරමින් එහි සේවා කාලය එම සේවක තැනගේ අඛණ්ඩ සේවා කාලයක් සේ පිළිගෙන හිඟ වැටුප් රහිතව ඔවුන්ට හිමි වැටුප් වර්ධක වාසිය පමණකි ලබා දිය යුතුය. ඒනමුත් වයස අවුරුදු 60න් ඔබ්බට මෙම හිමිකම අයත් නොවිය යුතුය."

As such, by the application of the said PE Circular No: 01/2013, I believe that the 3rd Respondent was entitled to continue in service without any extensions of services until his mandatory age of retirement of 60 years.

Since the Petitioner itself had admitted by X6 that the said extended contractual period was given to the 3rd Respondent without a break in service, such extensions should be regarded as the active service period of the 3rd Respondent at the Sri Lanka Transport Board from the date of his appointment on 03-06-1977 for purposes of computation of Gratuity and other statutory dues as well as for salary increments (if any). The decision of the 1st and 2 nd Respondent as reflected in P4 was based on the above-mentioned findings and therefore could be considered as a valid and lawful decision.

In the aforesaid premises, I believe that the Petitioner's application is misconceived in law and should therefore, be dismissed.

This petition is dismissed with cost.

**Judge of the Court of Appeal**

**Janak De Silva , J**

**I agree.**

**Judge of the Court of Appeal**