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

In the matter of an Appeal from the judgment of the High Court of *the Western Province Holden in Colombo under and in terms of inter alia Section 31DD of the Industrial Disputes Act as amended.*

SC Appeal No: 205/2017

SC/HC/LA No: 59/2015

HC Appeal No.
HC/ALT/46/2014

LT Colombo Case No:
LT/8/540/2011

R. A. Gunatilaka,
No. 59, Galpotta road,
Nawala.
APPLICANT

Vs.

Hapugastenna Plantations PLC,
No. 186,
Vauxhall Street,
Colombo 2.
RESPONDENT

AND

Hapugastenna Plantations PLC,
P.O. Box 2,
Nambapana,
Ingiriya.
RESPONDENT-APPELLANT

Vs.

R. A. Gunatilaka,
No. 59, Galpotta road,
Nawala.
APPLICANT-RESPONDENT

AND NOW BETWEEN

Hapugastenna Plantations PLC,
P.O. Box 2,
Nambapana,
Ingiriya.
RESPONDENT-APPELLANT-APPELLANT

Vs.

R. A. Gunatilaka,
No. 59, Galpotta road,
Nawala.
APPLICANT-RESPONDENT-RESPONDENT

Before **:** Janak De Silva, J.

: Sampath B. Abayakoon, J.

: M. Sampath K. B. Wijeratne, J.

Counsel **:** Faisz Musthapha, P.C. with Pulasthi Rupasinghe, Zeneta Ragel and Ms. Nayanthi Wanninayake instructed by Mrs. Tharmarajah Tharmaja for the Respondent-Appellant-Appellant.

	:	Razik Zarook, P.C. with Rohana Deshapriya and Chanakya Liyanage instructed by Ms. Lakni Silva for the Applicant-Respondent-Respondent.
Argued on	:	08-07-2025
Written Submissions	:	15-11-2018 (By the Applicant-Respondent-Respondent)
	:	28-07-2025 (By the Respondent-Appellant-Appellant)
Decided on	:	16-10-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the respondent-appellant-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of the judgment pronounced on 01-10-2015 by the Provincial High Court of the Western Province Holden in Colombo in respect of the appeals bearing No. HC/ALT/46/2014 and HC/ALT/48/2014.

Both these appeals preferred before the High Court had emanated from the order pronounced by the learned President of the Labour Tribunal of Colombo on 30-04-2014.

In HC/ALT/46/2014, the appellant, being the respondent named before the Labour Tribunal, has preferred an appeal against the order where the Labour Tribunal declared that the services of the applicant before the Labour Tribunal have been constructively terminated by the appellant and therefore, allowing him compensation.

In HC/ALT/48/2014, the applicant-respondent-respondent of the appeal before this Court (hereinafter referred to as the respondent) has preferred an appeal against the same order on the basis that he is not satisfied with the sum granted as compensation in his favour by the Labour Tribunal.

From the impugned judgment, the learned Judge of the High Court has decided to dismiss both the applications for the reasons stated in the judgment.

It is against the dismissal of the appeal preferred by the appellant in Case No. HC/ALT/46/2014, this appeal has been preferred.

When this matter was considered before this Court for the granting of leave to appeal on 23-10-2017, this Court granted leave on the questions of law set out in paragraph 8 (a) to (f) of the petition dated 07-11-2015. The appellant was also allowed to add two more questions for the consideration of the Court. The respondent, who was the applicant before the Labour Tribunal, was also allowed to formulate one question of law.

The said questions of law allowed read as follows.

1. Did the learned High Court Judge err in law by failing to come to the finding that the order of the learned President of the Labour Tribunal was not just and equitable?
2. Did the learned High Court Judge err in law by failing to consider and/or correctly evaluate the evidence placed before the Court?
3. Did the learned High Court Judge err in law by failing to take into account relevant circumstances and misdirected himself by taking into account irrelevant circumstances?
4. Did the learned High Court Judge err in law by coming to the finding that the petitioner had constructively terminated the respondent?
5. Did the learned High Court Judge err in law by failing to take into account that the respondent has accepted that he was retired from service and had instituted action in the Labour Tribunal as an afterthought?
6. Did the learned High Court Judge err in law by failing to come to the finding that the petitioner had retired from service upon attaining the requisite age of retirement?

7. In any event, the Labour Tribunal possessed of jurisdiction in as much as the evidence disclosed the retirement situation and not one of termination?
8. Is the quantum of compensation excessive and not computed according to law?
9. Does the respondent have a right to justifiable expectation that his employment should be continued in the circumstances of this case beyond 60?

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel who represented the appellant and also that of the learned President's Counsel who represented the respondent. This Court also had the privilege of considering the written submissions tendered to the Court by the parties.

This is a case where the respondent has filed an application before the Labour Tribunal of Colombo on 08-03-2011 seeking redress. In the application, he has stated that after joining the plantation sector as a Trainee Planter under the Sri Lanka State Plantations Corporation, he was employed by the said corporation as an Assistant Superintendent with effect from 06-06-1978. After serving the plantation sector over the years, his final assignment has been under the Hapugastenna Plantations PLC and Udupussellawa Plantations PLC, which were subsidiaries of James Finlays Group of Companies as the General Manager (Administration).

He has stated in his application before the Labour Tribunal that whilst working as the General Manager (Administration), the appellant, who was his employer sent him on retirement with effect from 15-10-2010 without prior notice on his completion of 60 years of age.

Claiming that there are several other employees who are above 60 years of age and still working at the appellant company, he too had a reasonable expectation that he would also be retained after the completion of 60 years, he has taken up the position that retiring him on completion of 60 years is

arbitrary, unjust, unreasonable, *mala fide*, and against the policy of the appellant company who is an equal opportunity employer.

On the above-mentioned basis, he has prayed before the Labour Tribunal for the following reliefs.

a) Declare that retiring the applicant on completion of 60 years is unjust and unreasonable,
b) Reinstate the applicant with back wages,
c) Grant costs and,
d) Such other and further reliefs as the tribunal seems fit.

Answering the above application before the Labour Tribunal, the appellant has taken up the position that the Labour Tribunal has no jurisdiction to go into the matter since there is no proper application filed in terms of section 31B (1) of the Industrial Disputes Act. The appellant has also taken up a preliminary objection on the basis that the respondent, who was the applicant before the Labour Tribunal, duly retired from service, and therefore, cannot maintain the application before the Labour Tribunal.

In relation to the above objections as to the maintainability of the application before the Labour Tribunal, an order has been pronounced on 05-08-2011 overruling the said objections. It has been determined that the claim of the applicant is on the basis that, retiring him at the completion of 60 years of age, the appellant has terminated his services, and therefore, that is a matter that needs to be looked into.

Accordingly, after the completion of the inquiry, the learned President of the Labour Tribunal pronouncing his order on 30-04-2014 has considered the policy of the appellant company to retain some of the employees beyond their retirement age, and has determined that the respondent also had a legitimate expectation of him being retained as such. It has been determined that retiring the respondent at his completion of 60 years of age would therefore amount to constructively terminating his services without a good and sufficient reason.

Accordingly, it has been decided to grant relief to the respondent by awarding him compensation.

The learned President of the Labour Tribunal has decided to grant compensation to the respondent based on his last drawn salary for a period of 12 months in a sum of Rs. 1,584,000/-.

The matter before this Court now is to determine whether the respondent, being the applicant before the Labour Tribunal, had a right to go before the Tribunal in terms of section 31B (1) and if so, whether the decision of the learned President of the Labour Tribunal to conclude that the appellant has constructively terminated his services and to order compensation can be justified.

In the impugned judgment, the learned Judge of the High Court has determined that the learned President was correct in overruling the preliminary objections on the basis that this was a matter which needed to be looked into.

It has been determined that it was the Labour Tribunal who was in a much better position to inquire into factual matters and reach a just and equitable finding, and an appellate forum will not disturb the findings unless it carries serious discrepancies.

It has been held that although the position of the appellant was that the company policy is to retire its employees after reaching the mandatory retirement age of 60 years, when considering executive grade officers of the company, the said policy has rarely been implemented, and hence, the respondent had a legitimate expectation of being employed beyond 60 years of age. The High Court has justified the learned President's determination that the appellant has failed to inform the respondent that he would be retired, giving him 12 months' notice in that regard. It has been determined further that the Labour Tribunal was correct in granting relief to the respondent on the basis of a just and equitable remedy and there is no basis for the High Court to interfere with the order.

At the same time, in determining the respondent's appeal, it has been held that the amount of compensation granted was sufficient.

Accordingly, both the appeals have been dismissed by the learned Judge of the High Court.

Section 31B (1) of the Industrial Disputes Act has provided for the manner in which a workman can file an application before the Labour Tribunal on the grounds stated therein.

The said section reads as follows:

> **31B. (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 labour tribunal for relief or redress in respect of any of the following matters:-(See section 7 of Act No. 32 of 1990 relating to pending actions (set out in Annexure to this Chapter). See also Act No. 19 of 1990 in this connection.)**
>
> **(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 workmen 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.**

Although the respondent has failed to specifically aver under what provision of the said section he is complaining to the Labour Tribunal, it is clear that if at all, it should be in terms of section 31B (1) (a) as the complaint does not relate to a question about the payment of gratuity, terms of employment or conditions of labour.

Since the appellant has raised a preliminary objection as to the maintainability of the application before the Labour Tribunal and a determination has been made overruling it, where the learned Judge of the High Court has also considered it in his judgment, I find it relevant to consider whether there was any justification in the said preliminary objection raised and the order pronounced in that regard, before proceeding with other facts of the matter.

There cannot be any doubt that the respondent had retired from the appellant company after reaching the mandatory age of retirement upon reaching the age of 60 years on 15-10-2010.

Although the respondent has claimed that he was not informed of his imminent retirement and he had a legitimate expectation of being re-employed beyond the age of 60 years, the letter marked R-06, which was a letter written on 03-08-2010 by the respondent to the Chairman of Finlays Tea Estates Lanka Pvt Ltd, and the reply he got in that regard on 04-08-2010 (the document marked R-07) suggest otherwise. From the reply letter, he has been informed that only the employees who are necessary to be retained beyond 60 years of age in view of the positions they occupy would be retained. He has been informed that upon his retirement, the company will not maintain a position of the General Manager (Administration), and therefore, his services will not be necessary and that he would not be retained. He has also been informed of him being given two extensions beyond 58 years of age previously.

Accordingly, the respondent has retired on the due date, and after his retirement, he has obtained his gratuity and other entitled payments (the documents marked R-08 and R-09).

I find that it was more than 4 months thereafter that the respondent had initiated the Labour Tribunal proceedings.

This goes on to show that there was no basis for the respondent to claim that he had a legitimate expectation of his services being extended beyond his mandatory retirement age. It is clear that he knew very well that he would have to retire after reaching the age of retirement.

The judgment pronounced on **07-09-2007 in SC Appeal No. 97/2006** was a judgment based on exactly the same facts. The applicant in that case went before the Labour Tribunal on the same basis and the Labour Tribunal held that his services were unjustly terminated and thereby ordered compensation.

After having considered the relevant facts and the law, **Andrew Somawansa, J.** stated;

> "*The evidence led at the inquiry as well as the subsequent conduct of the respondent clearly demonstrates that the respondent was retired from his service. Thus, he ceased to be an employee of the petitioner by virtue of his retirement and not because of termination of service by his employer the petitioner. In the circumstances, the respondent had no legal right to invoke the jurisdiction of the Labour Tribunal as he had failed to satisfy the requirements as set out in section 31B (1) (a) of the Industrial Disputes Act and also in terms of the said section the Labour Tribunal had no jurisdiction to entertain the respondent's application. Thus, it appears that the learned President of the Labour Tribunal had erred in coming to a conclusion that there was termination when in fact the evidence conclusively shows that it was retirement and not termination. The learned High Court Judge also affirmed the order of the Labour Tribunal without considering this aspect of the matter. As such the order of the learned President of the Labour Tribunal as well as the judgment of the learned High Court Judge are perverse and cannot be permitted to stand.*"

It is therefore manifestly clear that from the very outset of this action, the respondent has had no basis to maintain the application before the Labour

Tribunal although the learned President of the Labour Tribunal held otherwise, and the learned Judge of the High Court exercising his appellate jurisdiction also justified the order in dismissing the appeal.

It is settled law that an appellate Court will not interfere with a decision of a Labour Tribunal unless the said determination is perverse.

This aspect was well considered in the case of **Jayasuriya Vs. State Plantations Corporations (1995) 2 SLR 379**, which reads as follows.

> *(2) "In the context of the principle that the Court of Appeal will not interfere with a decision of a Labour Tribunal unless it is "perverse" it means no more that the Court may intervene if it is of the view that, having regard to the weight of evidence in relation to the matters in issue, the Tribunal has turned away arbitrarily or capriciously from what is true and right and fair in dealing even-handedly with the rights and interests of the workman, employer and, in certain circumstances, the public. The Tribunal must make an order in equity and good conscience, acting judicially, based on legal evidence rather than on beliefs that are fanciful or irrationally imagined notions or whims. Due account must be taken of the evidence in relation to the issues in the matter before the Tribunal. Otherwise, the order of the Tribunal must be set aside as being perverse.*
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> *(3) The Industrial Disputes Act No. 43 of 1950 S. 31D states that the order of a Labour Tribunal shall be final and shall not be called in question in any Court except on a question of law. While appellate Courts will not intervene with pure findings of fact, they will review the findings treating them as a question of law: if it appears that the Tribunal has made a finding wholly unsupported by evidence, or which is inconsistent with the evidence and contradictory of it; or where the Tribunal has failed to consider material and relevant evidence; or where it has failed to decide a material question or misconstrued the question at issue and had directed its attention to the wrong matters; or where there was an erroneous misconception amounting to a misdirection; or where it failed to consider material documents or misconstrued them or where the*

Tribunal has failed to consider the version of one party or his evidence; or erroneously supposed there was no evidence. "

It is clear to me that this was a matter where the learned President of the Labour Tribunal could have determined it based on the said preliminary objection alone. It is my considered view that the learned President of the Labour Tribunal was fundamentally flawed in his determination as to the said objection and the learned Judge of the High Court was also wrong in justifying the order of the Labour Tribunal.

Be that as it may, the evidence placed before the Labour Tribunal clearly establishes the fact that there could have been no legitimate expectation by the respondent as for him being re-employed after the retirement. The evidence clearly establishes that the appellant has retained the services of employees whose services are essential to be retained beyond the retirement age. However, it has been only done after the retirement of such employees by re-employing them on contract basis and not otherwise.

Since it has been clearly informed to the respondent that his substantive position of General Manager (Administration) would not be retained after his retirement, there was no necessity for the appellant to keep him in service.

The documents that have been submitted to the Labour Tribunal also show that the respondent had been preparing for his impending retirement knowing very well that he would be retired on the due date.

The letter marked R-16 shows that he has requested his employer, namely the appellant, to allow him to purchase a vehicle belonging to the company on a concessionary basis, which has been allowed by the company having considered his long-standing service to the company and the industry. He has been allowed to purchase the vehicle below the price submitted by other prospective buyers when the said vehicle was offered for sale.

I am of the view that there was no basis whatsoever before the Labour Tribunal for the learned President of the Labour Tribunal to come to a finding that the services of the petitioner have been constructively terminated by the appellant.

For the reasons as considered above, I answer the questions of law No. 1 to 6 in the affirmative. The question of law No. 7 is also answered in the affirmative. Answering the question of law No. 8 would not arise in view of the answers to the above questions of law.

In answering the question of law No. 9, I hold that the respondent had no right to justifiably expect that his employment should be continued beyond the retirement age of 60 years.

Accordingly, I allow the appeal and set aside the judgment dated 01-10-2015 pronounced by the learned Judge of the Provincial High Court of the Western Province Holden in Colombo while exercising its appellate jurisdiction.

Consequently, I set aside the order dated 30-04-2014 pronounced by the learned President of the Labour Tribunal of Colombo as both the said appellate judgment and the order cannot be allowed to stand.

There will be no costs of the appeal.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

M. Sampath K. B. Wijeratne, J.

I agree.

Judge of the Supreme Court