

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

SC APPEAL 03/2023

SC/SPL/LA 115/2022

HC/AMP/ALT/557/2020

LT Case No: 44/691/2018

*In In the matter of an application for Special
Leave to Appeal under and in terms of Article
154P(3)(b) of the Constitution and in terms
of provisions of Industrial Disputes Act No.
43 of 1950 (as amended) from the Judgement
of the High Court of the Eastern Province
(Holden in Ampara) dated 28 February 2022.*

H.M. Siriwardana
Rathugala Wellassa,
Galgamuwa,
Inginiyagala.

APPLICANT

Vs.

Jungle Safari Lanka (Pvt) Limited,
Rathugala, Galgamuwa,
Inginiyagala.

RESPONDENT

AND BETWEEN

Jungle Safari Lanka (Pvt) Limited,
Rathugala, Galgamuwa,
Inginiyagala.

RESPONDENT-APPELLANT

Vs.

H.M. Siriwardana

Rathugala Wellassa,

Galgamuwa,

Inginiyagala.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Jungle Safari Lanka (Pvt) Limited,

Rathugala, Galgamuwa,

Inginiyagala.

RESPONDENT-APPELLANT-
APPELLANT

Vs.

H.M. Siriwardana

Rathugala Wellassa,

Galgamuwa,

Inginiyagala.

APPLICANT-RESPONDENT-
RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**

ACHALA WENGAPPULI, J. AND

ARJUNA OBEYESEKERE, J

COUNSEL: Shamir Zavahir instructed by M/s Paul Ratnayake Associates for the Respondent-Appellant-Appellant

Nisala Seniya Fernando with Ms. Udeni Gallage for the Applicant-Respondent-Respondent

WRITTEN Written submissions on behalf of the Respondent-Appellant -

SUBMISSIONS: Appellant on 20th April 2023.

Written submissions on behalf of the Applicant-Respondent-Respondent on 20th May 2024.

Further Written submissions on behalf of the Respondent-Appellant - Appellant on 07th June 2024.

ARGUED ON: 19th July 2024

DECIDED ON: 19th September 2024

THURAIRAJA, PC, J.

1. The instant case is an appeal against the judgment of the High Court of the Eastern Province which affirmed an Order of the Labour Tribunal of Ampara. The Applicant-Respondent-Respondent in instant case, namely, H.M. Siriwardana (hereinafter referred to as the "Respondent"), instituted an action in the Labour Tribunal of Ampara on 19th December 2018 against the Respondent-Appellant-Appellant, namely, Jungle Safari Lanka (Pvt) Limited (hereinafter referred to as the "Appellant Company"), stating that he was constructively terminated by the Appellant Company on 18th January 2018, and sought

relief for his reinstatement of service with back wages, statutory dues and compensation for the alleged constructive termination.¹

2. The Appellant Company in their Answer² took up the preliminary objection that the Respondent had resigned from employment of his own volition. During the trial, the Appellant Company submitted as evidence the Letter of Resignation of the Respondent and contends that the Respondent has resigned at his own wish, thereby failing to constitute a wrongful termination of employment. The Respondent asserts this position by stating that the circumstances created by the Appellant Company were hostile, particularly in light of the accusations levied against him by a Manager of the Appellant Company, Mr. Roshan, and that such circumstances coerced the Respondent to submit a letter of resignation in order to be allowed to receive his Salary and Service fee for the month of January 2018. For ease of reference, I have reproduced the contents of the said letter, along with an approximate translation of the same.³

“සේවයෙන් ඉවත්වන බව දැනුම් දීම

“ගල්ඩය ලොජ්” සංචාරක නිවාධු තිකෙන්තනයේ මූලිකයෙන්ගේ සහායකයෙකු වගයෙන් වසර තුනක ආසන්න කාලයක් සේවය කළ මා 2018.01.26 දින සිට මගේ කැමෙත්ත මත සේවයෙන් ඉවත් වන බව මෙයින් දැනුම් දෙන අතර, 2018 ජනවාරි මස 26 දින උක්වා මා සේවය කරන මද දින කිපය සඳහා නියමිත වැටුප සහ සේවා ගාස්තු ලබා දෙන ලෙස මෙයින් ඉල්ලා සිටිමි

මෙයට

¹ Application submitted before the Labour Tribunal dated 19th December 2018, p. 1 of the Labour Tribunal brief.

² Answer of the Appellant Company (then Respondent) dated 04th April 2019, p. 7 of the Labour Tribunal brief

³ Letter of Resignation dated 27th January 2018 document marked as “වග 02”, p. 105 of the Supreme Court brief.

විශ්වාසී

(Signature of Respondent)

ජනවාරි මාසයට අදුල වැටුප සහ කේවා ගාස්තු ලබා ගනිමි.

මට,

H.M.සිරිවර්ධන

"Notice of Resigantion"

I, who have served as an assistant at 'Galoya Lodge' Tourist Holiday Resort for nearly three years, hereby inform you that I am resigning from my position effective January 26, 2018, at my own request. I request that the due salary and service fees for the days worked up to January 26, 2018, be provided to me accordingly.

Yours Faithfully,

(signature of Respondent)

I have received the salary and service for the month of January.

Sincerely,

H.M.Siriwardene

(Signature of Respondent)"

3. A salient point to note, however, is that the Respondent does not refer to or mention such circumstances in the said letter of resignation, and instead states that he is resigning on his own wishes. The abovementioned letter coherently stipulates that the Respondent wishes to resign from his services with effect from 26th January 2018 and acknowledges in writing and signature that he has been paid the full salary and service fee until January

2018 upon his request. At the first instance, while the Respondent asserts his position and states that he was allegedly terminated on 18th January 2018, while on the contrary the attendance sheet to be signed by the employers of the Appellant Company indicates that the Respondent had proceeded to report to work until the end of January 2018.⁴ Thereafter, during his cross-examination, the Respondent admits and apologises that the date of resignation stipulated in the initial application on his part and his alleged termination was effective from 26th January 2018.⁵

4. The Appellant Company contended that in such circumstances the instant action does not fall within the jurisdiction of the Labour Tribunal in accordance with the provisions of the Industrial Disputes Act (as amended)⁶, and thus prayed that the application be dismissed *in limine*. Despite having raised the said preliminary objection, in adjudicating this matter, the President of the Labour Tribunal issued an Order⁷ and held in favour of the Respondent concluding that, due to the allegations levied against the Respondent by the Manager of the Appellant Company, the prevailing conditions compelled the Respondent to resign from his position, thereby amounting to a wrongful constructive termination of the Respondent's employment. The Appellant Company appealed to the High Court of the Eastern Province holden in Ampara, whereby the High Court Judge delivered the judgment dated 28th February 2022 affirming the Order of the Labour Tribunal and dismissed the appeal of the Appellant Company.⁸

⁴ Attendance Sheet-Month of January document marked as “අං 01”, p. 104 of the Labour Tribunal brief.

⁵ Cross-Examination report dated 06th June 2019, p. 24 of the Labour Tribunal brief

⁶ S.31B(1) Industrial Disputes Act No.43 of 1950 (as amended)

⁷ Labour Tribunal Order dated 17th July 2020

⁸ Annexed to the Petition of the Appellant Company dated 08th April 2022 and marked as “A” in the Supreme Court brief

5. Being aggrieved by the Judgment of the High Court Judge, the Appellant Company preferred an appeal to the Supreme Court⁹ and prays to set aside the Judgment of the High Court of the Eastern Province holden in Ampara dated 28th February 2022, and to set aside and/or vary the Order of the Labour Tribunal of Ampara dated 17th July 2020. On 10th January 2023, the Supreme Court heard the submissions of the Counsel in support of the Petition and was inclined to grant leave to appeal to the questions of law provided under paragraphs 11(b) and 11(q) of the Petition. Further, the Counsel were granted permission to present an additional question of law concerning the Labour Tribunal's jurisdiction to adjudicate the present matter. Consequently, the Court granted leave to the three legal questions delineated below.

A. Has the Learned High Court Judge erred and misdirected himself in law in coming to the conclusion that the Respondent was constructively terminated?

B. Has the Learned High Court Judge erred and misdirected himself in law by not holding that the action of the Respondent was prescribed and/ or out of time?

C. Did the Labour Tribunal have jurisdiction to hear the application?

6. Upon careful consideration of the three legal questions in the context of the facts and circumstances of the present case, I find that the questions "A" and "B" are contingent on question "C" which pertains to the jurisdiction of the Labour Tribunal to entertain the instant action. Furthermore, when the instant case was argued before this Court on 03rd June 2024 and 19th July 2024, both parties resolved and concurred that it is sufficient to

⁹ Petition of the Appellant Company dated 08th April 2022

only address Question "C". Therefore, I will turn now to address the third of the aforementioned questions of law.

7. The Labour Tribunal is a creature and creation of the Industrial Disputes Act, and its jurisdiction is vested by and pursuant to **S. 31B** of the **Industrial Disputes Act**, whereby paragraph (1), states as follows.

(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:-

(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.

[Emphasis added]

8. Accordingly, the Labour Tribunal's jurisdiction is limited to adjudicating matters concerning termination of employment, gratuity entitlements and related issues, as well as other matters pertaining to the terms of employment. It should be noted that the Respondent does not seek relief for an infringement of the terms of the contract of employment, nor for any issues of payment of gratuity, rather, that the Respondent was coerced to submit his resignation and terminate his employment which amounts to constructive termination.¹⁰
9. In considering the factual matrix of the instant case, it was submitted by both parties at the proceedings before the Labour Tribunal that, prior to instituting this action before the Labour Tribunal, the Respondent had lodged a complaint before the Monaragala Labour Commission.¹¹ During the proceedings, the Respondent admits to this fact.¹²

පු: මේ සම්බන්ධව කමිකරු දෙපාර්තමේන්තුවට පැමිණිලි කළයාද?

පි: මොනාරාගල කමිකරු කාර්යාලයට පැමිණිලි කළා.

පු: කමිකරු කාර්යාලයෙන් දැනුම් දීමක් කළයාද?

පි: ඔව්. වන්දියක් අරන් දෙන්න බැහැ නැවත රැකියාවට යන්න කිවිවා.

[Q: *Have you complained to the Labour Department regarding this?*

A: *I lodged a complaint at the Monaragala Labour Commission.*

Q: *Did you receive any notice from the Labour Commission?*

¹⁰ pp. 1-2 of the Labour Tribunal brief, Application submitted before the Labour Tribunal dated 19th December 2018

¹¹ Vide document marked “@- 03” pg.96 of the Labour Tribunal brief, Letter No. MON-P-ID/2018/15

¹² p. 16 of the Labour Tribunal brief, statement of Respondent recorded during proceedings dated 02nd May 2019

A: Yes. That they are unable to grant me compensation and asked me to return to employment.]

10. The Respondent further elaborates that he had lodged a complaint at the Monaragala Labour Commission against the Manager of the Appellant Company, for allegedly having hurled false accusations at the Respondent, the excerpt which has been reproduced below.¹³

පු: කමිකර දෙපාර්තමේන්තුවට පැමිණිලි කළේ මොනව සම්බන්ධවද?

පි: බොර වෝදනා මත සේවය අවසන් කළා කියලා.

පු: තමාත නැවත සේවයට යන්න බැර හේතුව කිවිවද?

පි: ඔවුන්.

පු: තමාත කමිකර කාර්යාලයට කළ පැමිණිල්ලට සාධාරණයක් වුණාද?

පි: නැහැ.

[Q: What was the complaint to the Labour Commission regarding?

A: That they terminated services based on false accusations.

Q: Did you inform the reason you didn't want to be reinstated?

A: Yes.

Q: Did you receive any relief for the complaint lodged?

A: No.]

11. At the proceedings before the Labour Tribunal, the Respondent had admitted that the Appellant Company had not defaulted on any payments which were due to the

¹³ P. 27 of the Labour Tribunal brief, Labour Tribunal proceedings dated 06th June 2019

Respondent and, have made the necessary and all EPF/ETF contributions on behalf of the Respondent. In light of this, the Labour Commissioner has ordered that the Respondent be reinstated since there didn't appear to be any infringement of his employment contract. Upon being offered the option and opportunity for reinstatement, the Respondent had refused to accept such a relief, despite having sought to be reinstated in his initial application before the Labour Tribunal.¹⁴ Such refusal on the part of the Respondent was premised on the speculation that, should he return to employment he would be the victim of several other accusations in the future which may even pose the risk of being arrested. The relevant excerpts and approximate translations have been provided below.

පු: ඔබට යෝජනා කරනවා සේවක අර්ථ සාධක අරමුදල් නිසි පරිදි බැර කිරීමක් කරලා කියලා පිළිගන්නවද?

පි: ඔව්.

පු: සේවක භාරකාර අරමුදලට නිසි පරිදි මුදුල් බැර වෙලා කිවිවොත් පිළිගන්නවද? මාසිකව 3%ක් බැර වෙනවා තේදු?

පි: ඔව්.

පු: එතකොට ජනවාට 25 දක්වා නිසි පරිදි වැටුප්, සේවක අර්ථ සාධක මුදල්, සේවක භාරකාර මුදල් බැර වෙලා කිවිවොත් පිළිගන්නවද?

පි: ඔව්.

පු: සහකාර කමිකර කොමසාරිස්තුමා පැමිණිල්ල පිළිබඳ නිසි පියවරක් තොගත්තේ මේ සියලු දීමනා ගෙවලා තියෙන නිසා කිවිවොත් හරි තේදු?

පි: ඔව්.

¹⁴ P. 2 of the Labour Tribunal brief, Application submitted before the Labour Tribunal dated 19th December 2018

පු: ඔබ ඒ අවස්ථාවේ නැවත රැකියාවට සන්න කෙමති වුණුද?

පි: නැහැ. නැවත රැකියාවට ගියෙක් එම වඩා චෝදනාවක් කරලා පොලිසියට අල්ලා දෙන්න පූලුවන් නිසා ගියේ නැහැ.¹⁵

[Q: Do you accept that the employee's provident fund contributions have been properly paid?

A: Yes.

Q: If it is confirmed that the funds to the employee's provident fund have been properly deposited, do you acknowledge this? The contribution is 3% monthly, correct?

A: Yes.

Q: If it is confirmed that salary, employee provident fund contributions, and employee welfare fund contributions have been properly deposited up to 25th January, will you accept this?

A: Yes.

Q: Would it be accurate to state that the Assistant Commissioner of Labour did not take appropriate action regarding the complaint because all dues have been settled?

A: Yes.

Q: Did you wish to return to work at that time?

A: No. I did not want to return because I could face more issues and potentially involve the police if I did.]

¹⁵ p. 25-26 of the Labour Tribunal brief, statement of Respondent recorded during proceedings dated 06th June 2019

12. Further, Mr. Ajith Kumara who was the Accountant of the Appellant Company and the witness on behalf of the Appellant Company submitted to the Labour Commissioner and also admitted during the proceedings, that the Appellant Company was agreeable to have the Respondent reinstated, but that the Respondent had refused due to the Manager who had scolded him was still employed at the Appellant Company.¹⁶

පු: ඔබලා කම්කර දෙපාර්තමේන්තුවට මේ සම්බන්ධයෙන් පරීතිම කළා තේදු?

පි: ඔව්.

පු: එහි දී ඔබලා රැකියාව ලබා දෙන්න බැහැ කිවිවා?

පි: රැකියාව ලබා දෙන්න අපි පොරොන්දු වුණා. රෝජාන් කියන කළමනාකර එතෙන වැඩ කරන නිසා එතෙන වැඩ කරන්න බැහැ කියලා ඉල්ලුම්කර කිවිවා.

[Q: Did you file a complaint with the Department of Labour regarding this matter?

A: Yes.

Q: Did they state that they could not provide you with employment there?

A: We committed to providing employment. However, the Applicant¹⁷ stated that they could not work there because Roshan, the manager, was working there.]

¹⁶ p. 64 of the Labour Tribunal brief, statement of Respondent recorded during proceedings dated 19th December 2019

¹⁷ At present, Applicant-Respondent-Respondent (referred to as “Respondent”)

13. This factual circumstance thus prompts the question whether resorting to such a remedy before the Labour Commissioner would in any way affect the jurisdiction of the Labour Tribunal. At this juncture, I draw my attention to the latter provisions of s.31B Industrial Disputes Act, particularly **S. 31B (5)** of the **Industrial Disputes Act** which provides as follows.

"(5) Where an application under subsection (1) is entertained by a labour tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1)."

[Emphasis added]

14. In **Ceylon Tobacco Co. Ltd v. Illangasinghe**,¹⁸ upon the termination of her employment, the employee made an application to the Labour Commissioner, who in turn made an order stating that her case was not covered by the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as she had consented to the termination of her services by way of first, the cessation of her contract of employment, and second, her having accepted her gratuity and other service payments. She then sought relief before the Labour Tribunal pursuant to s.31B of the Industrial Disputes Act. The question placed before the Court was whether having resorted to her legal remedy under Act No. 45 of 1971 she could now seek relief under the Industrial Disputes Act. It was held that s.31B of the Industrial Disputes Act bars a workman from seeking relief under the said Act where he has first resorted any other legal remedy, and that the

¹⁸ (1986) 1 SLR 1

expression "legal remedy" means a remedy provided by the law whether it be under the common law or under statute s. 31B (5) is bars a workman from obtaining both his legal remedy under the Industrial Disputes Act and any other legal remedy. Further, the Court gave a strict interpretation to the word "resorted to another legal remedy" by stating as follows.

*"The counsel for the 2nd respondent, relying on the decision in **Mendis v R.***

V. D. B (80 CLW 49) contended that what section 31B(5) [**of the Industrial Disputes Act**] provides is not that a workman cannot seek his remedy under the Act and any other legal remedy also but that he **cannot obtain both**. I find myself unable to agree with this submission as it does violence to the plain language used in the section -"where he has first resorted to any other legal remedy". The ordinary meaning of the word 'resorted to' is 'to have recourse, to apply (to)". Lord Guest and Lord Devlin in their dissent in *The United Engineering Workers Union v Devanayagam*¹⁹ made the observation:

"The workman has to make his choice between the remedy afforded by the Act and any other legal remedy he may have: he cannot seek both"

[Emphasis added]

15. A similar interpretation of s.31B(5) of the Industrial Disputes Act was adopted in **Independent Newspapers Limited v. Commercial and Industrial Workers' Union**.²⁰ More recently, in delivering the judgment for the case **Rodrigo v. Central Engineering Consultancy Bureau**²¹ I have provided for a similar interpretation as follows.

¹⁹ 69 NLR 289, at 305

²⁰ (1997) 3 SLR 197

²¹ SC Appeal 228/2017, SC Minutes of 02 October 2020

"any other legal remedy in the second limb of section 31B(5) echoes and should be understood to have the same meaning as it has in the first limb of section 31B(5). Thus, it can be concluded with certainty that the phrase "any other legal remedy in the second limb of section 31B(5) is limited in its meaning to "any other legal remedy which the workman has previously sought in a court or other forum in respect of the termination of his services and which had the same subject matter as his subsequent application to the Labour Tribunal."

[Emphasis added]

16. From the above legal jurisprudence, it is clearly understood that it is immaterial whether or not the Respondent had refused the remedy or relief ordered by the Labour Commissioner but what is relevant and would directly affect the jurisdiction of the Labour Tribunal is if the Respondent had already sought some remedy before another forum possessing concurrent jurisdiction with the Labour Tribunal, which in the instant case the Respondent had done. It is clear from the evidence submitted before both the Labour Tribunal and the Provincial High Court that both the Learned President of the Labour Tribunal and the Learned High Court Judge were both well aware of the fact that the Respondent had received such remedy, but yet decide to let it go unnoticed and rule on constructive termination. What both courts have failed to comprehend is that, the Respondent's conduct of resorting to such other legal remedy has negated the jurisdiction of the Labour Tribunal and disentitles the Labour Tribunal from rendering such an Order in the instant case.
17. In light of the above, I answer the third question of law pertaining to the jurisdiction of Labour Tribunal negatively and, considering the lack of jurisdiction, I find it redundant to address the first and second questions of law as this is a matter to be dismissed *in limine*.

18. Therefore, I am inclined to allow the said appeal and set aside both the Order of the Labour Tribunal dated 17th July 2020, and the Judgment of the High Court dated 28th February 2022, and rule in favour of the Appellant Company.

Appeal allowed without costs.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J

I agree/disagree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J

I agree/disagree.

JUDGE OF THE SUPREME COURT