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

M.D.K. Padmasena,
Sandasiri Niwasa,
Henegama,
Mathugama.

Applicant

Case No. SC APPEAL 68/2022

SC (SPL) LA 145/2020

Provincial High Court Appeal No. 77/2019

L.T. Kalutara Case No. 18/KT/354/2015

-Vs.-

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

Respondent

AND BETWEEN

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

Respondent-Appellant

-Vs.-

M.D.K. Padmasena,
Sandasiri Niwasa,

Henegama,

Mathugama.

Applicant-Respondent

AND NOW BETWEEN

Sri Lanka Transport Board

No. 200, Kirula Road,

Narahenpita,

Colombo.

Respondent-Appellant-Appellant

-Vs.-

M.D.K. Padmasena,

Sandasiri Niwasa,

Henegama,

Mathugama.

Applicant-Respondent-Respondent

BEFORE: **ACTING CHIEF JUSTICE S. THURAIRAJA, PC**

JUSTICE A. H. M. D. NAWAZ

JUSTICE KUMUDINI WICKREMASINGHE

COUNSEL: Ms. V. Siriwardena, PC, ASG with Ms. Sabrina Ahmed, SSC instructed by Rizni Firdouse, SSA for the Respondent-Appellant-Appellant

Nisala Seniya Fernando instructed by the Legal Aid Commission for the Applicant-Respondent-Respondent

WRITTEN SUBMISSIONS: Respondent-Appellant-Appellant on 29th November 2022

Applicant-Respondent-Respondent on 20th July 2022

ARGUED ON: 02nd September 2024

DECIDED ON: 10th November 2025

THURAIRAJA, PC, ACTING CJ.

1. The Applicant-Respondent-Respondent, M.D.K. Padmasena (hereinafter the "Respondent"), was employed by the Respondent-Appellant-Appellant, Sri Lanka Transport Board, (hereinafter the "Appellant" or "SLTB") from 14th March 1981 and was set to retire on the 23rd of October 2011, upon the completion of 55 years of age, which was the compulsory age of retirement at the time.

2. Subsequently, as per SLTB–HR Circular No. 15/2011[1] issued by the Appellant Board, the age of retirement was extended up to the age of 57 years.

3. Thereafter, the Appellant issued SLTB–HR Circular No. 03/2013,[2] which further extended the age of retirement to 60 years. However, such extension was subject to the condition that it would be granted yearly upon requests/applications made 3 months prior to the date of retirement and upon such request/application being approved by the Board of the Appellant.

[1] Marked "R1"

[2] Marked "A6"

4. The Respondent, as he approached the age of 57, requested such an extension, duly complying with the above conditions. He was accordingly granted an extension for another year of service from 24th October 2013 to 23rd October 2014 until he turned 58.

5. Finding that the Respondent had failed in tendering a request for another year's extension, which he ought to have done 3 months prior to 23rd October 2014, the Appellant took steps to send the Respondent on retirement by letter dated 17th October 2014.[3]

6. Following this, on the 27th February 2014, the Respondent filed an application before the Labour Tribunal of Kalutara alleging that his services were terminated by the Appellant, and praying for, *inter alia,* reinstatement, back wages and damages as the Tribunal may deem fit to order.

7. The Appellant maintained that the Respondent's services were not terminated by the Appellant, but that the Respondent was sent on retirement with effect from 23rd October 2014 after reaching the age of 58 years, as he had failed to apply for further extension of service beyond the age of 58 years, 3 months prior to his retirement, as required by the existing Circular. The Appellant thus contends that the Respondent's services came to an end upon the expiration of the extended service period.

8. In spite of this, when the Appellant appeared before the Labour Tribunal, the Appellant had agreed to reinstate the Respondent without back wages as per Circular No. 01/2015 dated 08th March 2015,[4] which subsequently came into effect, setting out the age of retirement for SLTB employees as 60 years. However, the Respondent had not accepted this proposal.

[3] Letter of Retirement marked "A10"

[4] Marked "A5"

9. By order dated 12th March 2019, the Labour Tribunal of Kalutara held that the Respondent's services have been terminated by the Appellant and ordered that Rs. 658,852.80/- as compensation calculated for the salary of 24 months be paid to the Respondent.

10. Being aggrieved by the said order of the Labour Tribunal of Kalutara, the Appellant preferred an appeal to the Provincial High Court of the Western Province holden in Kalutara (hereinafter the "High Court"), praying *inter alia* that said order be set aside.

11. The learned High Court Judge, by Judgment dated 02nd July 2020 (hereinafter "the High Court Judgment"), dismissed the said appeal and further ordered that Rs. 50,000/- be paid to the Respondent as costs.

12. Being aggrieved by the same, the Appellant preferred the instant appeal to this Court. Leave was granted on the following questions of law raised by the Appellant:

    I. Did the learned High Court Judge err in failing to sufficiently consider and/or appreciate that the learned President of Labour Tribunal Kalutara has failed and/or neglected to properly analyse the evidence led before Labour Tribunal Kalutara when arriving at its order dated 12.03.2019?

    II. Did the learned High Court Judge err in coming into the finding and/or conclusion in his judgment that the Respondent has duly acted in terms of the provisions of the applicable circular marked 'A6'?

    III. Did the learned High Court Judge err in considering the decision taken by the Appellant to send the Respondent on retirement as a termination of his services?

ANALYSIS

13. As the Counsel for the Respondent has aptly highlighted in his written submissions, all questions of law before this Court relate to the factual circumstances of the matter and how the learned President of the Labour Tribunal and the learned High Court Judge analysed such facts. As the Respondent submitted, it is trite law that, when questions raised in an appeal from a Labour Tribunal matter relate to the assessment of factual circumstances, appellate courts must not interfere with the findings of the Tribunal, unless such findings are rationally untenable and/or are *perverse* to the evidence on record.[5]

14. As A.R.B. Amerasinghe, J. held in ***Jayasuriya v. Sri Lanka State Plantations Corporation:***[6]

> "*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*

[5] Respondent highlighted many judgments in this regard: *The Manager Woodend Estate, Mahaoya Group, Dehiovita v. Ceylon Estate Staffs' Union,* SC Appeal 93/2019, SC Minutes of 20th July 2023; *Diyakithulkanda Co-operative Thrift & Credit Society Ltd v. KA Munidasa,* SC Appeal 143/15, SC Minutes of 10th January 2023; *RA Dharmadasa v. Board of Investment of Sri Lanka,* SC Appeal 13/2019, SC Minutes of 16th June 2022; *Kotagala Plantations Ltd and Lankem Tea and Rubber Plantations (Pvt) Ltd v. Ceylon Planters' Society* (2010) 2 Sri LR 299; *Hatton National Bank v. Perera* (1996) 2 Sri LR 231; *Jayasuriya v. Sri Lanka State Plantations Corporation* (1995) 2 Sri LR 379; *The Caledonian (Ceylon) Tea and Rubber Estates Ltd v. Hillman* 79 NLR 421; *Ceylon Transport Board v. WAD Gunasinghe* 72 NLR 76; *Richard Pieris & Co. Ltd. v. Wijesiriwardena* 62 NLR 233

[6] (1995) 2 Sri LR 379, at p. 391 (Emphasis added)

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."

15. As to what the term 'perverse' may mean in this context, Amerasinghe, J. further observed there in that,

> *"…"Perverse" is an unfortunate term, for one may suppose obstinacy in what is wrong, and one thinks of Milton and how Satan in the Serpent had corrupted Eve, and of diversions to improper use, and even of subversion and ruinously turning things upside down, and, generally, of wickedness. Yet, in my view, 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 than 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*."[7]

16. As held in ***Ceylon Transport Board v. W. A. D. Gunasinghe***,[8] where a Labour Tribunal

[7] *ibid*, at p. 392

[8] 72 NLR 76, at p. 81

makes a finding of fact for which there is no evidence—a finding which is both inconsistent with the evidence and contradictory of it— the restriction of the right of the Supreme Court to review questions of law does not prevent it from examining and interfering with the order based on such a finding if the Labour Tribunal is under a duty to act judicially.

17. Both the Labour Tribunal and the High Court agreed the applicable Circular to be Circular No. 03/2013 dated 14th October 2013, marked "A6". Neither of the parties before this Court made any attempt to dispute this finding.

18. The last subsection of paragraph 3 of the said Circular is applicable to the Respondent as he falls into the category of employees whose age of retirement was increased from 55 to 57 years, under the previous Circular (SLTB–HR Circular No. 15/2011). As previously noted, under the Circular No. 03/2013 marked 'A6', the age of retirement was extended to 60 years, subject to the condition that such extension should be applied for annually, 3 months prior to reaching the age of retirement. The Circular also states that such extensions will be offered where the Appellant Board is satisfied with the said employees' service.

19. It is pertinent to note that the Respondent, upon nearing the age of 57, had once tendered such a request in 2013 as required by said Circular, and his services were extended by a year (from 24th October 2013 to 23rd October 2014), enabling him to remain employed till the age of 58.

20. The second question of law simply requires this Court to consider if the Respondent duly applied for a further extension thereafter, i.e. whether the Respondent has duly made an application in 2014, 3 months prior to 23rd October 2014.

21. Evidence of the Respondent was led before the Labour Tribunal. He testified that he made a timely application for an extension about 4 months prior to reaching his age of retirement. However, the Respondent was not able to produce any documentary evidence corroborating this claim.

22. The Respondent also called several other witnesses to give evidence before the Labour Tribunal as to the aforesaid purported extension application. According to the testimony of the Manager of the Matugama Depot, Nayana Priyankara de Alwis, the Respondent had tendered an extension application in or about June or July 2014, and he, as the head of the depot, had accepted said letter and given the same to the Correspondence Officer, Premathilaka, according to the ordinary procedure.

23. However, the Appellant contends that they did not receive the Respondent's purported letter seeking an extension. The Appellant claims to have accordingly issued the Respondent a notice of retirement by letter dated 31st July 2014 marked 'A8'.

24. The Respondent states that he received this letter marked 'A8' not in July, but only on 20th October 2014. This letter had been given directly to the Respondent and not through the Manager of the Depot, as is usually done. Thereafter, the Respondent states that he showed the letter to the Depot Manager. The Depot Manager stated in his evidence that he subsequently made inquiries pertaining to the letter and eventually discussed the matter with the Chairman of the Appellant Board. The Chairman had instructed that they promptly draft an appeal letter. The letter thus drafted, marked 'A9', was posted on 20th October 2014.

25. The Appellant states that the appeal letter marked 'A9' cannot be accepted as it was not made 3 months before the date of retirement as required by the Circular, and that they thereafter took steps to send the Respondent on Retirement by letter dated 17th October

2014 marked 'A10'. The said letter was handed over to the Respondent by the Depot Manager of Matugama on 22nd October 2014.

26. The Appellant reiterates that there was no termination of the Respondent's services, and that he simply attained the mandatory age of retirement, thus ending his term of services by operation of law in line with the applicable Circular.

27. The Respondent states in his written submissions that his letter of extension, which he posted in time as per the Circular, has been misplaced due to lapses on the part of the administration of the Appellant Board. However, as the Appellant highlighted throughout, the Respondent failed to provide any documentary evidence of such a letter.

28. In this regard, the Appellant, relying on Section 106 of the *Evidence Ordinance* and the rule of *ei incumbit probatio qui dicit* [the burden of the proof lies upon he who affirms, not he who denies],[9] emphasised that the burden was on the Respondent to submit evidence to establish that he duly complied with the applicable Circular.

29. It was the submission of the Respondent that a more flexible approach ought to be taken with respect to procedure when it comes to proceedings under the *Industrial Disputes Act*. While a Labour Tribunal is indeed not bound by the *Evidence Ordinance* or strict rules of evidence,[10] this Court has emphasised that procedures adopted by Labour Tribunals must be guided by and should not substantially stray away from established rules of justice and fairness.[11] Most well-established principles of evidence come within this

[9] Citing ERSR Coomaraswamy, *The Law of Evidence* Vol. II Book 1, at p. 250

[10] *vide* Section 36(4) of the *Industrial Disputes Act* (as amended); *Somawathie v. Backsons Textile Industries Ltd* (1973) 79 NLR 204

[11] *Anderson v. Husny* [2001] 1 Sri LR 168 at p. 175 (Mark Fernando J); *Associated Motorways (Pvt) Ltd v. Chandani Amaratunaga, Commissioner General of Labour*, CA/19/2016/Writ, CA Minutes of 20th July 2018, at p. 5 (Samayawardhena J, as His Lordship then was)

ambit, for they enact nothing but common sense.[12] While the Counsel for the Respondent himself acknowledged this, he further submitted that even the *Evidence Ordinance*, as set out in Section 65(3) therein, permits the leading of secondary evidence to prove the existence, condition or contents of a document when the original has been destroyed or lost, or when the party offering such evidence cannot produce the same within a reasonable time, for any other reasons not arising out of his own fault or negligence.

30. Taking a step further, the Appellant invited this Court to draw a presumption under Section 114(f) of the *Evidence Ordinance* with respect to the Respondent's failure to provide documentary evidence of making an extension application. I am not inclined to accept this submission that this failure to submit documentary evidence in itself should lead to an adverse inference against the Respondent. However, it is also to be noted that in the Respondent's application to the Labour Tribunal, he had not averred that he tendered a timely extension application. In addition, the Appellant Board in their Answer dated 17th April 2015 categorically states that there was no application made for an extension of services by the Respondent.[13] The Respondent's Replication does not specifically address the said averment, and nowhere in his pleading before the Labour Tribunal does he assert that there was a timely application made to extend his services.

31. Predicated on the above, the Appellant submits that the Respondent's position that he did, in fact, duly tender such an application requesting extension of services is an

[12] *vide Ceylon Cold Stores PLC v. Inter Company Employees' Union,* SC Appeal No. 17/2022, SC Minutes of 8th May 2025, at para 31; *Malini De Silva v. Sivasamy* [2020] 3 Sri LR 116, at p. 122; *Lal Wasantha Abeywickrama v. WAAM Dharmasena,* SC Appeal No. 142/10, SC Minutes of 13th August 2015, at p. 8; *Colombage v. Ceylon Petroleum Corporation* [1999] 3 Sri LR 150, at p. 151; *Ceylon University Clerical and Technical Association v. University of Ceylon* (1968) 72 NLR 84, at p. 90

[13] *vide* para 6 of the Respondent's Answer dated 17 April 2015

afterthought that had been put in evidence belatedly.

32. On this issue with respect to the Respondent's pleadings before the Labour Tribunal, the Counsel for the Respondent argued that an unduly technical approach should not be taken with respect to pleadings before Labour Tribunals, as persons appearing before Labour Tribunals do not file proxies and are not always represented by Attorneys-at-Law. He further highlighted the fact that the Respondent had not been represented by an Attorney-at-Law before the Labour Tribunal, according to what the record indicates.

33. While I agree that an overly technical approach in this regard would be inapt, a Labour Tribunal cannot ignore the pleadings set out before it, for that contains the exact nature of the grievance against which an applicant seeks relief. Moreover, what the Appellants have highlighted can hardly be considered a technicality. It is the very fact on which his claim depends. It is also indisputable that the Respondent was aware of the requirement to submit an application for extension 3 months prior to what would be his date of retirement, as he had done so once before in 2013. It should also be noted that even in the appeal letter marked 'A9', the Respondent fails to refer to the fact that he had tendered a timely extension letter in accordance with the applicable Circular.

34. In light of this, I wish to further observe that the stance taken by the Respondent before the Labour Tribunal has not been consistent. As noted above, he has made no mention of making an application for extension in his pleadings. Thereafter, in his evidence, he has taken the position that he made an extension application 3 months prior to the date of retirement and that it was misplaced. However, as recorded on 01st February 2016, the representative of the Respondent, while the Respondent himself was present before the Tribunal, had submitted the following before the Labour Tribunal:

> ''ඉල්ලුම්කරු වෙනුවෙන් කියා සිටින්නේ, මෙම ඉල්ලුම්කරුට සේවය අහෝසි කිරීම වෙනුවෙන් සහ ඊට පෙර සිට මෙම ඉල්ලුම්කරුට එම සේවා දිගුව වගඋත්තරකාර ආයතනයෙන්

අයැද සිටියද වගඋත්තරකරු ඉල්ලුම්කරුගේ සේවය දීර්ඝ කෙරීමට උනන්දුවක් නොදක්වා **පසුව එම ඉල්ලීම ප්‍රතික්ෂේප කර ඇත**. මේ අනුව **ඉල්ලුම්කරු දිගින් දිගටම රැකියාව අයඳුම් [sic] කළද** ඉල්ලුම්කරු නැවත සේවයේ ප්‍රතිශ්ඨාපනය කිරීමට වගඋත්තරකරු අපොහොසත් වීම නිසා මෙම අයඳුම් [sic] පත්‍රය ගරු විනිශ්චය සභාව වෙත යොමු කළෙමි...

[It is submitted on behalf of the Applicant that, with regard to the termination of the Applicant's service, although the Applicant had previously requested an extension of service from the Respondent Institution, the Respondent failed to show any interest in extending the Applicant's service and subsequently rejected the said request. Accordingly, despite the Applicant's continuous applications for employment, the Respondent failed to reinstate the Applicant in service. Therefore, this application has been referred to the Honourable Tribunal.]"[14]

35. As can be seen, on the said date, the Respondent had claimed that his duly submitted extension application had been rejected by the Appellant. He had also claimed that the Appellant continuously failed to extend his services despite repeated requests. However, the Respondent has failed to lead evidence to establish that he has, in fact, made such repeated requests.

36. Interestingly, the learned President of the Labour Tribunal has passingly acknowledged the contradictory nature of the Respondent's submission. On the 5th page of the Labour Tribunal order, the learned President has observed as follows:

"සේවායොජක සාක්ෂියට කැඳවූ සහකාර මානව සම්පත් උමේෂ් සංජීව ස්වකීය මූලික සක්ෂියේදී මෙන්ම හරස් ප්‍රශ්න වලදී ඉල්ලුම්කරු සේවා දිගුව අයැද ඇත්තේ මාස 3 කට පසුව වන ස්ථාවරය ඉතාමත් හොඳින් ආරක්ෂා කර ඇත. මේ අනුව **ඉල්ලුම්කරුගේ**

[14] Emphasis and an approximate translation added

ස්ථාවරය ඉල්ලුම්කරුගේම සාක්ෂිකරුවන්ගෙන් පරස්පර වී ඇති අතර, සේවායෝජක ස්ථාවරය සේවයෝජක සාක්ෂිකරුවකු විසින් පරස්පර කර ඇත...

[The Assistant Human Resources Officer Umesh Sanjeewa, who was called as a witness for the employer, has very well defended the position that the applicant applied for the extension of service after 3 months, both in his original testimony and in cross-examination. Accordingly, the applicant's position has been contradicted by the applicant's own witnesses, and the employer's position has been contradicted by an employer witness...]"[15]

37. While I noted earlier, contradictory positions taken by the Respondent are fairly obvious. However, I fail to see how the witness led for the Appellant contradicted the position taken by the Appellant. Howbeit, what I wish to emphasise categorically is that such contradictory positions significantly weaken the position of the Respondent and the learned President, in his order, ought to have placed more weight on this fact.

38. Although the learned President of the Labour Tribunal has correctly found, based on the evidence available on record, that the Respondent claimed to have submitted an extension application in 2014, the Respondent has clearly failed to establish as to when he tendered such an application. Accordingly, I am of the view that sufficient evidence has not been placed before the Labour Tribunal to decide whether the Respondent has in fact made an extension application 3 months prior in due compliance with the applicable Circular.

39. The Respondent had also claimed before the Labour Tribunal that he continued to work for the Appellant even after receiving the Letter of Retirement, i.e., till 31st October 2014. The Depot Manager also states in his evidence that the Respondent worked until his services were terminated due to the inability to make payments in the absence of a letter

[15] Emphasis and an approximate translation added

of extension. The evidence of Senior Security Officer, Wannagu Wannawaduge Don Jayasekara, also confirms that the Respondent reported to work even after the Respondent's purported date of retirement.

40. The learned President has observed in this regard that, even though the Respondent was sent on retirement on 23rd October 2014 based on the Retirement Letter marked 'A10', the Respondent had continued to work thereafter, finding that the Appellant had allowed the Respondent to work past the date of retirement.

41. The learned President aptly questions as to how and why the Respondent was so allowed to work past the purported date of retirement, if the Respondent had failed to duly submit an application for the extension of services. Based on this observation, the learned President proceeds to draw an inference that the Respondent would have tendered a timely application for an extension of his services for him to be so allowed to report to work even after the purported date of retirement, albeit for a short period. On this basis, the Labour Tribunal President has come to the conclusion that the retirement of the Respondent amounts to a termination of the Respondent's services.

42. The exact wording of the said Order is as follows:

> "A10 අනුව 2014.10.23 දින සේවයෙන් පසු ඉල්ලුම්කරුව විශ්‍රාම ගැන්විය යුතුය. කෙසේ වුවත් ඉල්ලුම්කරු හා ඉල්ලුම්කරු සාක්ෂියට කැඳවූ සාක්ෂිකරුවන්, ඉල්ලුම්කරු එම විශ්‍රාම දිනයෙන් පසුවද සේවය කළ බව තහවුරු කර ඇත. ඒ අනුව පැහැදිලි වන්නේ ඉල්ලුම්කරුව, 2014.10.23 සේවයෙන් පසුව විශ්‍රාම ගැන්වීමෙන් අනතුරුව සේවය කිරීමේ අවස්ථාවක් සේවා යෝජක විසින් සලසා ඇති බවයි. ඉල්ලුම්කරු අදාළ චක්‍රලේඛ වලට අනුකූලව ඉල්ලිම් කරනු නොලැබුවේ නම් එසේ සේවය කිරීමට අවස්ථාවක් ලබා දීමේ හේතුව කුමක්දැයි පැහැදිලි නොමැත. ඒ අනුව ඉල්ලුම්කරු නිසි කාකලය [sic] තුල ඉල්ලීම් කළ බවට අනුමිතියකට එළඹිය හැක…

[As per the document marked A10, the Applicant was due to retire from service on 23.10.2014. However, the Applicant, as well as the witnesses called on behalf of the Applicant, have confirmed that the Applicant continued in service beyond the said retirement date. Accordingly, it is evident that the Employer permitted the Applicant to continue in service after 23.10.2014. Even if the Applicant had not submitted a request in accordance with the relevant circulars, the reason for allowing such continuation remains unexplained. It may therefore be inferred that the Applicant submitted the request within the prescribed time.]"[16]

43. As it can be seen, the learned President has drawn this inference merely based on the Respondent reporting to work for an additional week subsequent to the date of retirement set out in the Letter of Retirement marked "A10".

44. The High Court has also drawn this inference, concurring with the learned Labour Tribunal President's reasoning, even after taking cognisance of the Appellant's contention that the Respondent has failed to prove that he duly tendered a request for extension.

45. The learned High Court Judge has reasoned as follows:

"*The Appellant stated that even if the Respondent firmly maintaining [sic] the fact that he had tendered a request for an extension of service in compliance with the terms of the circular, he was unable to prove it.*

Hence, the argument of the Appellant is that Sec. 106 and Sec. 114(f) applies [sic] to consider the Respondent's failure to adduce evidence to prove his position as such.

Be that as it may, the learned President of LT observed that the Respondent appeared

[16] as reflected in page 7 of the Labour Tribunal Order (approximate translation added)

to have worked after 24th October 2014 when he was to send on retirement. [sic]

The learned President of the LT has correctly evaluated the evidence adduced by both parties and concluded that the Respondent was allowed to work under the Appellant after the alleged date of retirement according to the Appellant.

Hence upon the inference one could have acquired from the act and the performances of the Appellant towards the Respondents as elicited at the inquiry, the Learned President of the LT has come to the conclusion that Appellant's act substantiated the position of the Respondents that he duly acted in terms of the provisions of the applicable circular to get service extended"[17]

46. The impugned Judgment of the High Court, which barely spans three pages, contains no other analysis of the Labour Tribunal Order or the evidence available on record than what I have quoted above. After a simple narration of factual circumstances surrounding the appeal, and the arguments put forward by the parties, the learned Judge has, in no more than three short paragraphs, come to conclude that the learned President of the Labour Tribunal has correctly evaluated the evidence in drawing the aforesaid inference. Moreover, it is amply clear that the learned High Court Judge has also drawn this inference—to the effect that the Respondent has duly submitted a request for extension—solely based on the Respondent being present at the workplace for no more than eight short days and acting as he ordinarily does while so present. While it may be true, as the evidence indicates, that the Respondent had placed his fingerprint and that other workmen at the site had interacted with him as usual, such circumstances cannot, in my view, be taken as indicative of the Respondent having been officially granted an extension of service.

[17] Judgment of the Provincial High Court of the Western Province Holden in Kalutara, dated 02nd July 2020, at p. 4

47. Practically speaking, it stands to reason that his colleagues, with whom he had worked for years, if not decades, would not have been indifferent to his presence at the site. And the Respondent himself, for he has clearly considered himself entitled to a service extension—as evidenced from his application before the Labour Tribunal—would naturally have conducted himself as though he remained in the employ of the Appellant.

48. If such reasoning—as that employed by the Labour Tribunal and the High Court—were to be allowed to stand, it necessarily follows that, for any employee to establish that he had been granted an extension of service beyond his date of retirement, such employee needs only to show up at work for several days and behave as though such extension had in fact been granted, hoping his unsuspecting colleagues would play along.

49. In my view, this inference, drawn by the Labour Tribunal as well as the High Court, is one that does not logically or rationally follow from the material available on record, especially considering the fact that the Respondent had not maintained a consistent position before the Labour Tribunal.

50. It cannot be gainsaid that, as the learned Counsel for the Respondent submitted, the spirit of the *Industrial Disputes Act* is the maintenance of industrial peace and the promotion of smooth labour dispute settlement.[18] To this end, any arbiter in industrial dispute settlement proceedings is expected to act—and is indeed empowered to act—in a manner that is just and equitable, unincumbered by strict procedural requirements and unconcerned with pedantic technicalities. If a workman, already hard done by an unjust dismissal, is expected to mount an extremely technical and complicated legal offensive to assert his rights as an employee, the very purpose of the Act would

[18] *Colombo Apothecaries Co. Ltd. v. Wijesooriya* 70 NLR 48

undoubtedly be defeated. The learned Counsel for the Respondent has extensively dealt with such matters in his Post-Argument Written Submissions.[19]

51. While that may be so, the attitude towards workmen in these proceedings cannot be so lenient that one is allowed to succeed in his application where he fails to be consistent as to the circumstances of such application—that, in my view, is the bare minimum.

52. Some matters may involve administrative particulars and finer details of management that are generally lost on most workmen. In this matter, too, the Tribunal was confronted with questions as to the applicability of circulars and finer legal considerations such as whether a compelled involuntary retirement would constitute termination within the meaning of the *Industrial Disputes Act.* It would be most reasonable for a workman, or a representative acting on behalf of such workman, to make errors and/or, at times, even inconsistent applications with respect to such matters. A Labour Tribunal or a court sitting in appeal may certainly overlook such shortcomings. However, where an applicant is inconsistent as to his own conduct material to the dispute, a judge must be wary of placing excessive reliance on his assertions, in the absence of independent or extrinsic evidence supporting such reliance.

53. As this Court has repeatedly emphasised, labour adjudication must always be just and equitable towards both parties.[20] Just and equitable jurisdiction that is conferred upon Labour Tribunals and the favourable spirit reflected in the *Industrial Disputes Act* towards

[19] Which, I might add, was well researched and of great assistance while authoring this judgment

[20] *RA Dharmadasa v. Board of Investment of Sri Lanka,* SC Appeal No. 13/2019, SC Minutes of 16th June 2022; *Singer Industries (Ceylon) Ltd. v. Ceylon Mercantile Industrial and General Workers Union and Others* [2010] 1 Sri LR 66; *Standard Chartered Grindlays Bank Limited v. The Minister of Labour*, SC Appeal No. 22/2003; SC Minutes of 4th April 2008; *Millers Limited v. Ceylon Mercantile Industrial and General Workers Union (CMU)* [1993] 1 Sri LR 197; *The Caledonian (Ceylon) Tea and Rubber Estates Ltd v. Hillman* 79 NLR 421; *The Ceylon Estates Staffs' Union v. The Superintendent, Meddecombra Estate, Watagoda and Another* 73 NLR 278; *Municipal Council of Colombo v. T.P. De S. Munasinghe and 4 Others* 71 NLR 223

the workmen, intended to counteract the unequal bargaining power as between the parties, does not absolve such Tribunals, as well as courts sitting in appeal, from their burden to act judicially.[21]

54. Considering the aforementioned, I find that the impugned Order of the Labour Tribunal is devoid of evidential support, and the key inference therein, which drove the Tribunal's conclusion, is not based upon sound reasoning.

55. The Judgment of the High Court, as I previously highlighted, is only a plain affirmation of the Labour Tribunal finding, unsupported by any additional reasoning or analysis. This affirmation of the High Court is preceded only by a reiteration of the factual circumstances and the arguments advanced on behalf of the parties. The High Court has manifestly failed to appraise the evidence on record adequately.

56. For the foregoing reasons, I answer all questions of law in the affirmative. The appeal is accordingly allowed.

57. The Judgment dated 02nd July 2020 of the Provincial High Court of the Western Province holden in Kalutara and the Order of the Labour Tribunal of Kalutara dated 12th March 2019 are both set aside. The application of the Appellant-Respondent-Respondent should stand dismissed.

Appeal Allowed.

ACTING CHIEF JUSTICE

[21] See *RA Dharmadasa v. Board of Investment of Sri Lanka,* SC Appeal No. 13/2019, SC Minutes of 16th June 2022 at p. 6-7 (Obeyesekere J); *Ceylon Transport Board v. Gunasinghe* 72 NLR 76, at p. 83 (Weeramantry J)

A. H. M. D. NAWAZ, J.

I agree.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT