

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

In the matter of an application for the issue of a mandate in the nature of a writ of certiorari and/or mandamus under Article 140 of the Constitution of Sri Lanka.

Sri Lankan Airlines Limited, Airline
Centre ,
Bandaranayaka International
Airport,
Katunayaka.

Petitioner

Vs.

1. Sri Lankan Airlines Aircraft
Technicians
Association, No: 14, Mahawela
Place, Kirulapona, Colombo 06.
2. The Minister of Labour and
Labour Relations, Labour
Secretariat,
Narahenpita, Colombo 05.
3. The Commissioner of Labour,
Labour Secretariat,
Narahenpita, Colombo 05.
4. Mr. Palitah Weerasekera, No:
33/2, Nimala Maria Mawatha,
Handala, Wattala.

Respondents

C.A. Writ Application No. 89/2012

Before : W.L.R. Silva,J. (Acting P/CA)

Counsel : Gomin Daysiri with Mrs Nandi Jinadasa
for the petitioner.

Nimal Hapuarachchi for the 1st
Respondent.

Argued &
Decided on : 04.05.2012

W.L.R. Silva,J. (Acting P,C/A

Heard counsel in support of this case. In effect what he is challenging is the decision of the Arbitrator allowing additional evidence to be taken on behalf of the respondent after they closed their case and the matter was fixed for written submissions.

The Learned arbitrator has cited the Judgment of His Lordship Kulatunga,J in Shahul Hameed Kithar Mohamed vs.

Wanigasinghe Mudiyanseelage Gunapala, respondent in SC No. 49/93, HC Uva 29/91 Labour Tribunal, Bandula No: 5/15113/83 wherein His Lordship Justice Kulatunga held as follows: “ I am also of the view that the conduct of the tribunal in permitting the respondent to call evidence after he had closed his case is unobjectionable. It is the duty of the tribunal to hear all evidence without being hamstrung by technicalities. The calling of additional evidence has not caused prejudice to the appellant.

The Learned counsel in support of this application submitted that in that case the evidence had gone in unobjected and that it has not caused any prejudice. He further contended that the criterion that has to be considered is the absence of prejudice.

I disagree because I feel that, in my opinion, H/L Kulatunga, J. has categorically emphasized that an arbitrator or a tribunal should not be hamstrung by technicalities and it is the duty of such tribunal or arbitrator to hear all such



evidence necessary because finally what is expected is a just and equitable order substantially different from a judgment of a Court of Laws.

Acting ~~PRESIDENT OF THE COURT OF APPEAL~~

Jmr/-