

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

In the matter of an Application for an
order in the nature of a writ of
Certiorari in terms of Article 140 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Young An Lank (Private) Limited,
Export Processing Zone,
Biyagama.

Petitioner

C.A. Writ Application No: 1909/2003

Vs

1. Mahinda Madihahewa ,
Commissioner General of Labour,
Department of Labour,
Labour Secretariat, Colombo 5.

And two (02) others

Respondents.

BEFORE : **S. SRISKANDARAJAH, J.(P/CA)**

COUNSEL : **Ronald Perera with R.D.Johnthasan**
for the Petitioner
Sumathi Dharmawardena SSC
for the 1st to 3rd Respondents.

Argued on : 30.08.2010, 29.09.2010 & 31.05.2011
Decided on : 18.01.2012

S.Sriskandarajah.J.

The Petitioner is a Limited Liability Company. It has constructed three factories at Koggala with the approval of the Board of Investment. The factories were manufacturing garments, apparel and headwear. Due to the competition in the said field the Petitioner company was compelled to reduce its employees. In this regard the Chairman of the Petitioner's parent Company in Korea sent a letter dated 27.10.2001 to the Minister of Labour highlighting the difficulties faced by the Petitioner and requested permission for the termination of redundant employees of all three factories of the Petitioner. The Petitioner made an application to the Commissioner of Labour on 21.02.2002 seeking to terminate the services of 84 employees whose services were redundant. The Petitioner by its letter of 06.04.2002 sent a list of names of 84 employees who were considered as redundant employees. When the employees came to know about the steps taken to terminate some of the employees as redundant all the employees stopped work from 05.04.2002. As a result of the said strike, the Petitioner had lost most of its orders. The Petitioner informed its workers that the Company will be closed temporarily and their salaries will not be paid until the factory start functioning once again. The Petitioner thereafter decided to close its Koggala factory with effect from 24.04.2002 as the Petitioner's customers had cancelled all orders due to the prevailing situation. This was informed to the employees by a letter dated 22.04.2002. By letter dated 10.05.2002 the chairman of the Petitioner's parent company in Korea informed the Chairman/Director General of the Board of Investment of the Petitioner's intention to utilise the said Company for alternative purpose. The Petitioner had purchased the Daewood Bus Division in Korea and started manufacturing buses in the said factory.

The Petitioner admitted that the factory was closed and the employment of the employees who were working there were terminated. This termination has taken place without the consent of the employees. The Petitioner had not got prior permission from the Commissioner of Labour to terminate the services of the employees. In these circumstances the employees are entitled to seek relief under the Termination of Employment (Special Provision) Act. On a complaint made by the employees the 2nd Respondent was appointed by the 1st Respondent to inquire into this matter. The 2nd Respondent after an inquiry made his recommendation to the 1st Respondent with his reasons. The 1st Respondent after considering the recommendation and the reasons given by the 2nd Respondent came to the conclusion that the employees are entitled for two (02) months salary per year of service. This decision was communicated to the petitioner by his letter dated 17.09.2003 marked P29.

The Petitioner in this application is seeking a writ of certiorari to quash the said decision marked as P29 as the said decision is unlawful arbitrary and unreasonable on the basis that the amount determined as compensation is excessive and beyond the capacity of the Petitioner. If such payment is made it will cause the closure of the Petitioner's entire business and the two remaining factories.

It is an admitted fact that on one occasion in the year 2002 the Petitioner obtained approval from the 1st Respondent under Section 2 of the Termination of Employment (Special Provisions) Act as amended to terminate the employment of 156 employees. In this occasion the 1st Respondent entered a settlement between the workmen and the Petitioner on 18.03.2002 and the Petitioner agreed to pay two (02) month salary per each year of service as compensation.

In the instant application the Petitioner has terminated the employment of the employees without the consent of the employees or the approval of the 1st Respondent. This is a violation of Section 2 of the Termination of Employment (Special Provisions) Act as amended. In *Liyanage and another v Commissioner of Labour and Others* [2004] 2 Sri L R 23 the factors relevant in computing compensation in the context of the Termination of Employment of Workmen (Special Provisions) Act was considered by Amarathunga J and he observed that "In computing the compensation payable to the Petitioners, the Commissioner has taken into account the reason for termination of services, the period of service of each petitioner, the age and their present employment." The period of service and the age were considered in the above judgement as reasonable rational to be utilized in computation of compensation in the event their employment is terminated. In *Magpeck Exports Ltd v Commissioner of Labour and Others* [2000] 2 Sri L R 308 the court observed that "In the matter of the assessment of compensation and the assessment of quantum payable, the Commissioner of labour has to approach the problem before him in very much the same manner a labour tribunal which is called upon to award compensation.". In other words the commissioner when awarding compensation has to award a compensation which is just and equitable.

Even though the Petitioner has abundant the manufacture of garments, apparel and headwear the Petitioner is engaged in the business of manufacturing buses in the said factory. Therefore the award of the said compensation cannot be considered as arbitrary or unreasonable and therefore it is not unlawful. For these reasons I dismiss this application without costs.

President of the Court of Appeal