

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

In the matter of an application for a
Mandate in the nature of writ of
certiorari Under and in terms of Article
140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Sri Lanka Ports Authority,
No. 19, Chaithya Road,
Colombo 01.

Petitioner

C.A.(Writ) Application No: 506/2010

Vs.

1. Hon. Gamini Lokuge,
Minister of Labour Relations and
Productivity Improvement,
Ministry of Labour Relation and
Productivity Improvement,
Labour Secretariat, Colombo 05.
2. Hon. Athauda Seneviratne,
Minister of Justice,
Ministry of Justice,
Superior Courts Complex, Colombo
12.
3. W.J.L.U. Wijeweera,
Commissioner General of Labour,
Department of Labour,
Labour Secretariat, Colombo 05.
4. Liyod Galhena,
No.101B, Raja Mawatha, Ratmalana.

5. H.A.S.A. De Silva,
No.181A, Upper Lacasis Watta Road,
Weliyaya, Monaragala.
6. H.S. Fernando,
No.34, Ganga Mawatha,
Katuwana, Kuruduwatta Road,
Ja-Ela.
7. T.M.T. Hemachandra,
H48, Pandulagama,
Anuradhapura.

Respondents

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

COUNSEL : Uditha Egalahewa with Gihan Galabodage,
for the Petitioner
Anusha Samaranayake
for the 1st to 3rd Respondents
Dammika Jayanathi
for the 5th,6th and 7th Respondent

Argued on : 02.12.2011

Written Submissions on : 16.01.2012

Decided on : 11.06.2012

S.Sriskandarajah.J

The Petitioner in this appeal is seeking a Writ of Certiorari to quash the reference of a dispute for arbitration by the Minister, the 2nd Respondent, under Section 4(1) of the Industrial Dispute Act. The dispute referred was, between the Petitioner and the 5th, 6th & 7th Respondents and it was formulated as follows:- Whether any injustice was caused

to Messrs. H.A.S.A. De Silva, H.S. Fernando, T.M.T. Hemachandra, in consequence of placing them on a lower salary step at the time of offering them new posts as Store Men (Grade II) with effect from 28th August 2002, whereas they had drawn a higher salary step in the said Authority earlier and, if injustice was caused, to what relief each of them is entitled?

The Petitioner raised a preliminary objection before the Arbitrator when the matter was taken up for inquiry on 12th January 2010, that the said reference was bad in law as there is no industrial dispute between the parties concerned and the purported industrial dispute complained of by the 5th, 6th and 7th Respondents was based on a settlement entered into in the Labour Tribunal under the Industrial Disputes Act in 2002. If the said settlement is not properly implemented by the Petitioner-Authority, appropriate action should have been taken by the 5th, 6th and 7th Respondents within the time period stipulated in the Industrial Disputes Act without waiting for 5 years.

The 4th Respondent, the Arbitrator, after considering the aforesaid preliminary objection, over-ruled the same and held that the reference is valid in law on the basis that although the dispute that has arisen between the parties in terminating the services of the 5th, 6th and 7th Respondents were settled in the Labour Tribunal, the reference is on another dispute which has been in existence between the two parties on the terms and conditions of their new contract of employment.

The facts of this case reveal the services of the 5th, 6th and 7th Respondents who were working in the Petitioner-Authority as Security Guards and served in that capacity until 1999, were suspended from their service with effect from 5th April 1999 due to certain acts of misconduct. Subsequent to the said suspension of service, a domestic inquiry was held and, upon the finding of the said domestic inquiry, the services of the 5th, 6th and 7th Respondents were terminated with effect from 5th April 1999 by letters dated 7th November 2000. Against the said termination, the 5th, 6th and

7th Respondents made three separate applications to the Labour Tribunal in terms of Section 31B of the Industrial Disputes Act alleging that their services had been illegally and unjustly terminated by the Petitioner and, inter alia, prayed for reinstatement with back wages.

On or about 2nd August 2002, the said Labour Tribunal applications were settled and an order was made by the Labour Tribunal. The terms and conditions of the settlement are as follows:-

- 1) To employ the Applicants as new entrants without affecting their status,
- 2) Applicants would not be appointed to the same posts which they held at the time of termination of their services;
- 3) Applicants might appeal to the Chairman of the Respondent-Authority for back wages and the decision of the Chairman in that regard shall be final and conclusive.

Subsequent to the aforesaid settlement order, the 5th, 6th and 7th Respondents had been appointed to the Supplies Division of the Petitioner-Authority as Store Men (Grade II) subject to a probationary period of 3 years. The applicable salary scale for the said post was Scale No.21, and the 5th, 6th and 7th Respondents were placed on the initial salary step of the said salary scale as they were considered as new entrants.

The appeals made by the 5th, 6th and 7th Respondents for their back wages were refused by the Chairman of the Petitioner-Authority, but each of them were paid Rs.250,000/- as an ex-gratia payment on the recommendation of an Appeal Board appointed by the Chairman on a special request made by the Co-ordinating Secretary to His Excellency the President.

The complaints of the 5th, 6th and 7th Respondents were that the Petitioner-Authority, in appointing them to the post of Store Men (Grade II), has violated the terms and conditions of the settlement entered in the Labour Tribunal. The settlement is to employ the 5th, 6th and 7th Respondents as new entrants without affecting their status. The Petitioner-Authority has in fact appointed the 5th, 6th and 7th Respondents and considered them as new entrants, and placed them in the initial salary step of the post to which they were attached, but the Petitioner-Authority has failed to consider the 2nd part of the 1st settlement, viz., that the Petitioner should employ the 5th, 6th and 7th Respondents without affecting their status. Whether the present appointment and the salary scale has affected their status is the matter in dispute. The Petitioner cannot claim that the settlements entered into in the Labour Tribunal had been fully complied with in re-appointing the 5th, 6th and 7th Respondents to their present posts and, therefore, no industrial dispute within the meaning of Section 48 of the Industrial Disputes Act could have arisen between the Petitioner and the 5th, 6th and 7th Respondents.

The matter in dispute is not whether they were re-employed or not, but whether their status was maintained while they were re-employed. The Minister has considered this as an industrial dispute, and he had referred the same for arbitration. The Minister is entitled to use his discretion to refer an industrial dispute for arbitration, and this Court cannot interfere in the Minister's decision to refer the same for arbitration. At the same time the Arbitrator has over-ruled the preliminary objection namely; the reference was invalid and the said decision of the Arbitrator in the given circumstances valid. Therefore, this Court is not inclined to grant the reliefs prayed for by the Petitioner in this application and dismisses this application without cost.

President of the Court of Appeal