

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

In the matter of an application for a mandate in
the nature of Writs of Certiorari in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Tri-Star Apparel Exports (Pvt) Ltd,
No 30, Maligawa Road ,
Ratmalana.

Petitioner

C.A. Writ Application No: 635/2008

Vs

1. Hon. Athauda Senevirathne,
Minister of Labour and Man Power,
Ministry of Labour and Man Power,
Labour Secretariat,
Colombo 5.
And four (04) others.

Respondents.

BEFORE : S. SRISKANDARAJAH, J.

COUNSEL : Uditha Egalahewa,

for the Petitioner

Maithri Amarasinghe Jayatilake SC

for the 1st to 4th Respondents

Argued on : 26.11.2010

Decided on : 07.03.2011

S.Sriskandarajah J.

The Petitioner is a Company engaged in the garments manufacturing trade. A dispute between the Petitioner and the 4th Respondent the All Ceylon Commercial and Industrial Workers' Union was referred for settlement by arbitration under Section 4(1) of the Industrial Disputes Act. The matters in dispute are:

Whether the demand made by the All Ceylon Commercial & Industrial Workers' Union that:

1. The employees in the Printing Section of the Tri Star Apparels (Pvt) Ltd at No. 19, Gangedara Mawatha, Attidiya, Rathmalana should be granted 14 days leave in addition to the leave entitlement presently enjoyed by them and
2. Their salary should be increased by 25% and if not, to what relief the said employees are entitled.

The arbitrator after an inquiry made order on 30th of April 2008 to the effect that:

- (a) The employees attached to the printing section of the Petitioner Company should be given 21 days leave including 7 days leave in addition to the 14 days annual leave that they presently enjoy;
- (b) A salary increase of 20% should be given to the employees attached to the printing section of the Petitioner Company whose salary is less than Rs.7500/-

(c) A salary increase of 15% should be given to the employees attached to the printing section of the Petitioner Company whose salary is more than Rs.7500/-

The Petitioner in this application is seeking a writ of certiorari to quash the aforesaid award on the basis that in terms of the Section 21,24 and 25 of the Wages Boards Ordinance, the Petitioner Company is only liable and responsible to pay the minimum wages and to make available the minimum days of annual leave to employees of the Petitioner Company declared by the respective Wages Board to their employees who come under the purview of the said Wages Board. The Petitioner contended that in terms of the provisions of the said Wages Board Ordinance, the Petitioner could not be compelled to grant more than what has been declared by the respective Wages Board in respect of the employees who came under the said Wages Board. The award of this nature would result in further industrial dispute and all other section of the Petitioner Company will also agitate for the same benefits.

The Wages Boards Ordinance regulates the wages and the other emoluments of persons employed in trade. The respective Wages Board established in relation to a particular trade is only empowered to fix the minimum wages and the entitlement of holidays. Hence it is not illegal for a workman or a Trade Union to demand higher wages and/or leave depending on the circumstances such as the increase of cost of living, the profits the company make etc. It is not illegal to pay wages above the minimum wages fixed by a Wages Board established in relation to a particular trade.

In this instant case the 5th Respondent had made representation to the Petitioner in relation to the increase of wages and their leave entitlement. As this was not resolved amicably the dispute was referred to an arbitrator. Before the arbitrator evidence were led by both parties and they were cross-examined. The arbitrator in his award after analysing the evidence and taking into consideration the concerns of the Petitioner that

the wage increase to a sector of employees might pave way for the other sector of employees to demand wage increase and the leave sought was in excess of the leave entitlement has arrived at a finding. This court on numerous occasions have held that a Court in review cannot decide whether a decision is right or wrong but it can only review a decision that is illegal. A court on review is concerned only with the question whether the act or order under attack is lawful or unlawful and it should be allowed to stand or not; *Best Footwear (pvt)Ltd., and Two Others v Aboosally, former Minister of Labour & Vocational Training and Others* [1997]2 Sri L R 137.

In *R. v. Deputy Industrial Injuries Commissioner ex parte Moore* - [1965] 1 All E.R. 81 at page 84 Diplock, L.J. held:

"The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer; but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his."

The Petitioner's challenge to the said award of granting a wage increase and additional leave entitlement on the ground that it violates the decision of the Wages Board decision in respect of the said trade is untenable. As the Wages Board as discussed above determines the minimum wages and the holiday entitlements. In considering the facts and circumstances of each case in resolving a dispute through settlement by arbitration the arbitrator could make an order to the employer to pay a higher wage or

more than a minimum wage to an employee. In relation to the leave entitlement the arbitrator has considered the fact that the Petitioner Company closes business for seven days during the Sinhala New Year period and deducts that period from the employees leave. This was found by the arbitrator as unreasonable and allowed additional leave entitlement to the members of the 4th Respondent Union.

In the above circumstances the Petitioner has not established any ground on which this court could excise its writ jurisdiction to quash the said award. Hence this court dismisses this application without costs.

Judge of the Court of Appeal