

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 Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ceylon Electricity Board
No. 50, Sir Chittampalam A Gardiner
Mawatha, P.O. Box 540,
Colombo 02.

C.A. (Writ) Application No. 81/2010

PETITIONER

Vs

1. Hon Athauda Seneviratne
Minister of Labour and Man Power
Ministry of Labour and Man Power
Labour Secretariat,
Colombo 05.
2. Hon. Mahinda Samarasinghe
Minister of Human Rights and
Disaster Management,
No 2, Wijerama Mawatha,
Colombo 07.

3. Upali Wijeweera
Commissioner General of Labour
Labour Secretariat,
Colombo 05.
4. Kapila M. Sarachchandra
No 53/2, Nawala Road,
Nugegoda.
5. M.A.M. Fernando
No 71/1, "Sada Sarana"
Yakkalawatte, Bakmigolla,
Ibbagamuwa.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Uditha Egalahewa P.C. with
R. Dayananda for the Petitioner.

S.T. Gunawardane for the 5th
Respondent.

Chaya Sri Nammuni SC for the
1st to 4th Respondents.

ARGUED ON

: 07th March, 2014.

DECIDED ON

: 06th June, 2014

Deepali Wijesundera J.

The petitioner a Statutory Board Established under the Ceylon Electricity Board Act No. 17 of 1969 (as amended) filed this application against the respondents praying for a writ of certiorari to quash the order of the 4th respondent dated 27/05/2009 contained in *Government Gazette No. 1610/12 dated 14/07/2009* marked as **P2**.

The 5th respondent had been employed by the petitioner Board and for charges levelled against him at a domestic inquiry his services had been terminated. Initially he was interdicted with effect from 14/02/1983 and his services were terminated on 02/01/1989 by the petitioner. The 5th respondent had filed an application in the Labour Tribunal and after due process of law the learned President of the Labour Tribunal had made order reinstating the 5th respondent with 30 months backwages as at 09/09/1989. The petitioner being aggrieved by this order appealed and the petitioner's application was dismissed by order dated 20/08/1992 and has ordered the petitioner to reinstated the 5th respondent on or before 01/10/1992. There was no appeal to the Supreme Court.

The petitioner Board when granting the long term service awards to its employees' did not consider the 5th respondent since his period of unemployment from 14/02/1983 to 26/10/1992 was considered as a break in service despite him being reinstated. The 5th respondent has written to the Commissioner General of Labour (3rd respondent) who after an inquiry ordered the petitioner to give all his dues as if he had been in continuous service to the 5th respondent within 14 days. The said order is marked as **A18**. The petitioner did not adhere to this order and the 5th respondent has again complained to the 3rd respondent who referred this under *Section 4(1) of the Industrial Disputes Act to the Arbitrator*.

The Arbitrator having heard both parties has given the award in favour of the 5th respondent which was published in the Government Gazette marked **P2** which the petitioner is seeking to quash.

The petitioner claimed that the Arbitrator's award was outside the scope of the reference and therefore it is arbitrary. He stated that the Arbitrator cannot order the granting of a service award and that he cannot award salary increments and promotions since all of them had to be earned by the employee concerned. Petitioner argued that the

Arbitrator had stepped out of his reference from which he derives jurisdiction for the award.

The petitioner has cited the judgment in *Nagaratnam Vs State of Madras 1965 LLI 85* which states that if a party raises a jurisdictional issue the Tribunal must first decide on that issue before proceeding further. This does not arise in this application. Citing the judgment in *Peoples Bank Vs Gilbert Weerasinghe BASL Law Journal Volume XIV page 133* he stated that the Arbitrator is wrong in coming to the conclusion that the workman should be awarded long services rewards when the workman failed to establish his entitlement to the same. He also cited the judgments in *Richard Pieris Vs Wijesiriwardena 62 NLR 233*, *Municipal Council of Colombo Vs Munasinghe 71 NLR 223* and *State Bank of India Vs Edirisinghe 1991 1 SLR 397* and argued that the Arbitrator cannot create new rights and that the Tribunal has to make a just and equitable order.

The respondents while agreeing that the Arbitrator has to act within the scope of the reference stated that the reference itself is wide enough to encompass the relief granted.

In reply to the petitioner's argument that the 5th respondent was awarded the highest salary point at reinstatement the respondent stated citing the judgments in *De Silva Vs Senanayake (1967) 70 NLT 320* and *Corea Vs Corea (1925) 328* that an erroneous use of the discretion cannot be corrected by way of writ.

The respondent stated that the Arbitrator award (b) reads to say that the 5th respondent be awarded the service award disregarding his break in service which is within the scope of the reference.

The respondent stated that the Arbitrator is not compelling the petitioner to give the 5th respondent promotions or increments and that the award merely states that any promotions or increments so far withheld due to the non-recognition of the period as continuous service be given to the 5th respondent if that was the only criteria upon which such benefits were withheld.

Citing the judgment in *Sukumaran Vs The Maharajah Organization and two others 2008 BLR 398* the respondent stated that the award of the Arbitrator was within the scope of the reference because there is a judicial dicta to say that an Industrial Arbitrator differs

from a Commercial Arbitrator in that he is entitled to look into and interpret the contract of employment within the broad parameters of justice and equity and infer new legal bonds between the employee and employer.

When granting a writ this court has to see whether the facts show the existence of any pre requisites to grant a writ, is a question of law which has to be decided on a sound and reasonable interpretation. In the instant case it is the award of the Arbitrator. The award was made after considering the evidence placed before the Arbitrator as the learned State Counsel pointed out In the case of *Brown and Company PLC Vs Minister of Labour and others 2011 (2) BLR 485* it was held.

“The function of the Arbitral power in relation to industrial disputes is to ascertain and declare what in the opinion of the Arbitrator ought to be the respective rights and liabilities of the parties as they exist at the moment the proceedings are instituted” this gives a wide margin for the Arbitrator to inquire into and call for evidence in order to meet the ends of justice.

The Arbitrator has carefully analysed the evidence placed before him and made the award. This court on perusal of P2 find that he has analysed and given reasons as to how he came to make the said award. Therefore one cannot say he has gone beyond his reference.

For the afore stated reasons this court decides that the Arbitrator has considered both law and equity which does not exceed his jurisdiction. Therefore this court has no reason to interfere with the decision made by the Arbitrator. Petitioner's application is dismissed with costs fixed at Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL.