

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

In the matter of an application under Article 154
(p)(3)(1), 154(p)6 and 138(1) of the Constitution
of the Democratic Socialist Republic of Sri Lanka.

Deputy Commissioner of Labour
Department of Labour,
Badulla.

CA (PHC) 30/2014
Badulla Provincial High Court
Revision Application No. 98/2013
M.C. Mahiyangana-86246(Labour)

Complainant

Vs.

S.M.M. Hilmi
Colombo Traders,
Tile Factory Road,
Mahiyanganaya.

Respondent

Now

S.M.M. Hilmi
Colombo Traders,
Tile Factory Road,
Mahiyanganaya.

Respondent-Petitioner

Vs.

Deputy Commissioner of Labour
Department of Labour,
Badulla.

Complainant-Respondent

And now Between

S.M.M. Hilmi
Colombo Traders,
Tile Factory Road,
Mahiyanganaya.

**Respondent-Petitioner-
Appellant**

Vs.

Deputy Commissioner of Labour
Department of Labour,
Badulla

**Complainant-
Respondent-Respondent**

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : Gamini Attanayake for the Appellant-Petitioner.
Zuhri Zain, SC for the Complainant-Respondent**

Argued On : 16 /06 /2016

Written Submissions On : 08/08/2016

Decided on : 09 / 09 /2016

H. C. J. Madawala , J

When this matter came up for argument state counsel for the Complainant-Respondent-Respondent raised the following preliminary objections.

- 1- The provisions mentioned in the caption by which the counsel for the appellant-petitioner is seeking to invoke the jurisdiction of this court, is incorrect for the reason that article 154 (p) (3) (1) (b) such article is not included in the constitution.
- 2- This matter is an appeal which has been lodge out of time that the petitioner has not come before this court within time.

Both counsels were directed to file written submission with regard to the preliminary objection within one month.

The Attorneys-at-Law for the Appellant-Petitioner and Complainant-Respondent-Respondent has filed their respective written submissions. The Attorney-at-Law for the Appellant-Petitioner submitted that the preliminary legal objections to the petitioners appeal was that the petition of appeal has not stated the legal basis to this appeal. He has submitted that Article 154 (p) (3) (b) of the constitution read with Article 154 (p) (6) states as follows,

“ subject to the provisions of the Constitution and any law, any person aggrieved by the final order, judgment or sentence of any such court in the exercise of its jurisdiction under paragraphs (3)(b) or (3) (c) or (4) , may appeal therefrom to the court of appeal in accordance with article 138.”

An appeal from an order of the High Court in exercise of its revisionary jurisdiction should be made to the Court of Appeal. The state counsel appearing for the Complainant-Respondent-Respondent submitted that there is no article contained in the Constitution as Article No 154 (p) (3) (1) (b). It was submitted that the appellant should have sought to invoke the jurisdiction of this court in terms of Article 154 (p) (3) (b) with 154 (p) (6).

I find that the Attorney-at-Law for the petitioner in his written submissions has accepted the fact that the appellant should have sought to invoke the jurisdiction of court in terms of Article 154 (p) (3) (b) read with Article 154 (p) (6).

In the petition of appeal I find that the application has been invoked under the wrong article of the constitution which is not in existence.

The counsel for the Appellant-Petitioner has submitted that the order of the High Court dated 23rd January 2014 and the petition of appeal had been filed on 21st of February 2014. He has stated that the petitioner has explained the reason for the delay in the petition of

appeal under sub section 5 of the petition of appeal and that the petitioner has given good and valid reasons for the delay and therefore there is no unjustifiable delay in applying for the remedy. Therefore he moved that court be pleased to overrule the preliminary objection of the respondent and make an order to proceed with the appeal for the appellant.

The state counsel appearing for the Complainant- Respondent- Respondent submitted that the appellant should have lodged this appeal against the judgment of the Provincial High Court within 14 days from the time of such judgment being passed or made.

“2. (1) Any person who shall be dissatisfied with any judgment or final order or sentence pronounced by a High Court in the exercise of the appellate or reversionary jurisdiction vested in it by article 154 p (3)(b) of the constitution may prefer an appeal to the Court of Appeal against such judgment for any error in law, or in fact-

(a) By lodging within fourteen days from the time of such judgment or order being passed or made with such High Court, petition of appeal addressed to the court of Appeal.”

It was submitted that the order of Provincial High Court was dated 23/1/2014 and the appeal on a question of fact or law should have been lodged within fourteen days therefrom. I find that the petition of appeal is dated 21/2/2014 therefore it is evidently clear that the appeal has been preferred before this court almost a month after the date of the Provincial High Court judgment. Hence I find that this appeal is clearly out of time. The petition of appeal states that the appellant was sick from 26/1/2014 up to 8/3/2014. However I find that he has failed to annex any documentation in proof of this position. Accordingly we uphold the objection made by the Complainant-Respondent-Respondent and dismiss this petition of appeal in limine.

Judge of the Court of Appeal

L.T.D.Dehideniya, J

I agree.

Judge of the Court of Appeal