

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

In the matter of an Appeal made in terms  
of Section 754 of the Civil Procedure  
Code

CA 608/1999(F)  
D. C. Colombo

Thiremuni Peter  
Morakele – Opposite the School,  
Upper Kottaramulla.

Case No.16262/MR

**Plaintiff**

**Vs.**

1. A.S. Jayawardene,  
Secretary to the Treasury,  
The Secretariat, Colombo 01.
2. Daya Liyanage,  
Deputy Secretary to the Treasury,  
The Secretariat, Colombo 01.
3. Seemasahitha Wennappuwa Janatha  
Santhaka Pravahna Sevaya,  
Dummaladeniya, Wennappuwa.

**Defendants**

**And Between**

1. A.S. Jayawardene,  
Secretary to the Treasury,  
The Secretariat, Colombo 01.
- 1A. Punchi Bandara Jayasundara  
Secretary to the Treasury,  
The Secretariat, Colombo 01.
2. Daya Liyanage,  
Deputy Secretary to the Treasury,  
The Secretariat, Colombo 01.
- 2A. Sajith Ruchika Artigala

Deputy Secretary to the Treasury,  
The Secretariat, Colombo 01.

**Defendant – Appellants**

**Vs.**

Thiremuni Peter  
Morakele – Opposite the School,  
Upper Kottaramulla.

**Plaintiff – Respondent**

3. Seemasahitha Wennapupuwa Janatha  
Santhaka Pravahna Sevaya,  
Dummaladeniya, Wennappuwa.

3A. Sri Lanka Transport Board  
No. 200,  
Kirula Road,  
Colombo 05

**Defendant – Respondent**

**And Now Between**

1. A.S. Jayawardene,  
Secretary to the Treasury,  
The Secretariat, Colombo 01.

1A. Punchi Bandara Jayasundara  
Secretary to the Treasury,  
The Secretariat, Colombo 01.

1B. Ranepura Hewage Samantha  
Samrathunga,  
Secretary to the Treasury,  
The Secretariat, Colombo 01.

2. Daya Liyanage,  
Deputy Secretary to the Treasury,  
The Secretariat, Colombo 01.

2A. Sajith Ruchika Artigala

Deputy Secretary to the Treasury,  
The Secretariat, Colombo 01.

**Defendant – Appellants – Petitioners**

**Vs.**

Thiremuni Peter  
Morakele – Opposite the School,  
Upper Kottaramulla.

**Plaintiff – Respondent – Respondent**

Seemasahitha Wennapupuwa Janatha  
Santhaka Pravahna Sevaya,  
Dummaladeniya, Wennappuwa.

Sri Lanka Transport Board  
No. 200,  
Kirula Road,  
Colombo 05.

**Substituted – Defendant – Respondent**

**BEFORE: M.M.A.GAFFOOR J**  
**S. DEVIKA DE LIVERA TENNEKOON J**

**COUNSEL:** Drusila Jayanthakumar for the Defendant – Appellant –  
Petitioner

Ranjith Ranawaka instructed by Kosala H. Perera for  
the Defendant – Respondent – Respondent.

R. C. Bandara with S. L. Samarakoon for the Plaintiff  
Respondent – Respondent

H. Kosala Hiranthi Perera for the Substituted Defendant  
– Respondent

**ARGUED ON:** 24.10.2016

**DECIDED ON: 14.02.2017**

**S. DEVIKA DE LIVERA TENNEKOON J**

The instant Appeal was filed against the impugned Judgment of the learned Judge of the District Court of Colombo dated 12.07.1999 in case bearing No. 16262/M.

The said District Court action was filed by the Plaintiff – Respondent (hereinafter referred to as the Plaintiff) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant – Appellants (hereinafter referred to as the Appellants) and the 3<sup>rd</sup> Defendant Seemasahitha Wennapupuwa Janatha Santhaka Pravahna Sevaya.

The Plaintiff sought *inter alia* for;

- a) A declaration that his removal as Director of the 3<sup>rd</sup> Respondent Company was illegal, null and void;
- b) A sum of Rs. 500,000/- as compensation from the 1<sup>st</sup> – 3<sup>rd</sup> Defendants jointly and severally for the pain of mind, social and financial loss suffered as a result of his removal.

By judgment dated 12.07.1999 the learned Trial Judge found in favor of the Plaintiff and awarded Rs. 200,000/ as compensation to the Plaintiff, to be paid by the Defendants jointly and severally.

Being aggrieved by the said Judgement the instant Appeal was preferred on several grounds and the Appellant's main contention was that Article 10 of the Articles of Association was misinterpreted. The Appellants further contended

that the 1<sup>st</sup> – 3<sup>rd</sup> Defendants could not have been held jointly and severally liable for a breach of contract of employment which subsisted between the Plaintiff and the 3<sup>rd</sup> Defendant.

In brief the Plaintiff took up the position that the principal grievance of the Plaintiff – Respondent relates to his removal as Director of the 3<sup>rd</sup> Respondent Company by the 1<sup>st</sup> Appellant. The cause of action of the Plaintiff is solely based on Article 10 of the Articles of Association marked as P2 and attached to the Plaintiff, wherein it is stated as follows;

‘Such first executive directors may be removed by the Secretary to the Treasury or the Board of Directors, for any reason whatsoever but without prejudice to any claim they may have for damages for breach of any contract of service between them and the Company.’

The Plaintiff – Respondent had been appointed as one of the first directors by letter of the 1<sup>st</sup> Defendant dated 27.06.1991 marked as P3 as attached to the Plaintiff and marked as P2 at trial. He had been removed from this position by the letter of the 1<sup>st</sup> Defendant by letter dated 24.11.1994 marked as P5 as attached to the Plaintiff and marked as P4 at trial.

The crux of the Appellants case is a misinterpretation of Article 10 of the Articles of Association by the learned Trial Judge.

The Plaintiff was appointed to the post of General Manager by the Defendant – Respondent pursuant to a contract dated 29.06.1991 which has been marked as P4 as attached to the Plaintiff and marked as P3 at trial. It is significant that the

Plaintiff has not alleged a breach of this contract as the basis for his prayer for compensation.

The Appellant's position is that this provision allows for a removal of a Director for any reason whatsoever, by the 1<sup>st</sup> Defendant and even goes so far as to say that even a removal on a political basis is justified. The Appellant contends that the only exception to the limitless capacity of the 1<sup>st</sup> Defendant to remove a Director is the statement that "without prejudice to any claim they may have for damages for breach of any contract of service between them and the Company" which the Appellants contends is unambiguous and clear in this regard.

In this light the Appellants are of the view that at trial however, the Plaintiff did not pursue the breach of contract as the cause of action but the removal per se.

The Plaintiff submits a list of technical faults which he alleges have been committed by the Appellants in preferring this Appeal. The Respondent contends that the 3<sup>rd</sup> Respondent Company was incorporated as a limited Company under the Companies Act No. 17 of 1982 in 09.07.1991 and that it is governed by the Articles of Association and further that the appointment of the Plaintiff as a Company Director under Article 10 of articles of association and allowing the Respondent to continue his work without signing any new employment contracts its tantamount to the assurance that the employment contract prior to the incorporation would continue under the new management.

Reference is made to section 3(2) of the Conversion of Government Owned Business Undertakings into Public Corporations Act, No. 22 of 1987 which states that;

(c) all officers and servants of that business undertaking all the day immediately preceding the relevant date who are not offered employment with the Corporation or who do not accept any such offer of employment shall be entitled to the payment of such compensation and gratuity as may be determined by the Cabinet of Ministers;

(d) all contracts and agreements entered into for the purposes of that business undertaking and subsisting on the day immediately preceding the relevant date shall be deemed, with effect from the relevant date, to be contracts and agreements entered into by that corporation;

The Plaintiff therefore submits that the former employment contract reflected in appointment letter marked and produced as P4 along with the Plaint would be fit and proper to entitle the Respondent to institute an action to claim this right for damages under Article 10 aforementioned.

The learned Counsel for the Appellants brings to the attention of this Court cases CA No. 456/98 (F), Mendis Vs. Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and others 1995 (2) SLR 284 and Seabridge Shipping Ltd Vs. Ceylon Petroleum Corporation 2002 (1) SLR 126.

The case of CA No. 456/98 (F) concerns a similar but factually different case to the instant appeal, where Article 10 of Association of the Maharagama Janatha Santhaka Pravahana Sevaya was considered by Chitrasiri J.

This Court is of the view that a plain reading of Article 10 of the Articles of Association marked as P2 and attached to the Plaint, wherein it is stated as follows;

‘Such first executive directors may be removed by the Secretary to the Treasury or the Board of Directors, for any reason whatsoever but without prejudice to any claim they may have for damages for breach of any contract of service between them and the Company.’

It is clear in that the Secretary to the Treasury may for any reason whatsoever remove an executive Director and as such this Court finds that the termination of the Plaintiff was not illegal and therefore not null and void and that the learned Trial Judge has misapplied the above Article. This Court further finds that the award of compensation to Plaintiff was unsubstantiated and as such bad in law.

For the aforesaid reasons this appeal is allowed. The action filed by the Plaintiff – Respondent is dismissed. The learned Trial Judge is directed to enter decree accordingly.

*Appeal allowed.*

Judge of the Court of Appeal

**M.M.A. Gaffoor J**

I Agree.

Judge of the Court of Appeal