

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

In the matter of an Application for Mandates in  
the nature of *Certiorari* and *Mandamus* in terms  
of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Tea Small Holdings Development Authority,  
No. 70, Parliament Road,  
Pelawatta, Battaramulla.

**PETITIONER**

CA (Writ) Application No: 219/2014      Vs.

1. Hon. W.D.J. Seneviratne,  
Minister of Labour and Trade Union Relations,  
Minister of Labour and Trade Union Relations,  
2<sup>nd</sup> Floor, Labour Secretariat,  
Narahenpita, Colombo 05.
2. Chandanee Amaratunga,  
Commissioner General of Labour,  
Department of Labour, Labour Secretariat,  
Narahenpita, Colombo 05.
3. D.A. Wijewardena,  
Arbitrator,  
9<sup>th</sup> Floor, Labour Secretariat,  
Narahenpita, Colombo 05.

4. T.A. Muhandiram,  
Lot. No. 1, Rock Bridge Estate,  
Waladura Road, Malawa, Kuruwita.

**RESPONDENTS**

**Before** : P. Padman Surasena, J. (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : Janaprith Fernando instructed by D.D.P. Dassanayake for the  
Petitioner.

U.P. Senasinghe, SC for the Respondents.

**Argued on** : 04/05/2018

**Written Submissions by the 4<sup>th</sup> Respondent filed on:** 08/06/2018

**Judgment on** : 31/07/2018

**A.L. Shiran Gooneratne J.**

The Petitioner has invoked the jurisdiction of this Court to seek a mandate in the nature of writ of Certiorari to quash the findings of the Arbitral Award made by the 3<sup>rd</sup> Respondent dated 02/01/2014, marked P10, as contained in the Government Gazette Notification No. 1848/25, dated 06/02/2014, marked P11,

and to quash the reference made by the 1<sup>st</sup> Respondent to the 3<sup>rd</sup> Respondent under Section 4(1) of the Industrial Disputes Act.

When this matter was take up for argument the parties agreed to proceed on the following grounds of reference.

- (a) Since the 4<sup>th</sup> Respondent has retired on a Voluntary Retirement Scheme (VRS), is there any ground for Arbitration?
- (b) Did the Arbitrator act ultra vires when deciding to refer the matter to Arbitration.

The facts of the case briefly are as follows;

The 4<sup>th</sup> Respondent was appointed to the post of Book Keeper Grade VI, at the Petitioner authority on 03/01/1983. On 23/09/1989 the 4<sup>th</sup> Respondents employment with the said authority was terminated on the ground of misconduct. The said Respondent thereafter, filed an application at the Labour Tribunal of Ratnapura for re-instatement to the said post. By order dated 12/08/1998, the learned President of the Labour Tribunal dismissed the application filed by the said Respondent. By order dated 18/12/2000, the Provincial High Court, allowed the appeal and ordered re-instated of the 4<sup>th</sup> Respondent with back wages. However, the Petitioner re-instated the 4<sup>th</sup> Respondent without due promotions. By letter dated 24/04/2002, the 4<sup>th</sup> Respondent has requested the Petitioner that he be re-instated as Assistant Accountant Grade V and VI respectively, as at the relevant

dates. Due to the failure on the part of the authority to act fully on the said determination, a compliant was made to the Human Rights Commission HRC, and the HRC by its order dated 15/07/2005, recommended that the said promotions be affected on the due dates. Since the Petitioner Authority did not comply with the said recommendation, the 4<sup>th</sup> Respondent complained to the 2<sup>nd</sup> Respondent, the Commissioner of Labor, and the matter was thereafter referred to Arbitration by the 1<sup>st</sup> Respondent.

It is observed that in the latter part of year 2004, the 4<sup>th</sup> Respondent applied for retirement under the VRS, offered to the employees of the Petitioner Authority. The 4<sup>th</sup> Respondent submits that he accepted the said retirement without prejudice to his rights to pursue with the complaint made to the HRC, and his retirement entitlements. In support, the 4<sup>th</sup> Respondent has drawn attention to documents marked 4R2 (b) and 4R 3, pleaded in the statement of objections filed of record.

The Petitioner by circular dated 08/10/2004, marked P6, has called for applications for VRS from all employees. The 4<sup>th</sup> Respondent by his application dated 22/10/2004, marked P7, has accepted the VRS conditional to that he has no further claims from the Petitioner, as reflected in the last paragraph of the said application. Therefore, the Petitioner deny any further claim for relief by the 4<sup>th</sup> Respondent.

In this background, before looking into the decision to refer this matter to arbitration, I will proceed to deal with documents marked 4R2 (b) and 4R3 which the 4<sup>th</sup> Respondent claims that gives him the right to accept the VRS “subject to his entitlements and rights”. It is important to note that the 4<sup>th</sup> Respondents application to the Commissioner of Labour was based on the said documents, in which the 4<sup>th</sup> Respondent claimed gave him a right to invoke relief by reference to Arbitration.

The Petitioner submits that the 4<sup>th</sup> Respondent made an application in terms of the said circular marked P6, for a VRS, by application marked P7, which was duly accepted by the Petitioner. As contained in paragraph 6 of the statement of objections, the Respondent has relied on the said application for VRS to advance his stand at the Arbitration proceedings. However, having relied on the said application marked P7, the Respondent in his statement of objections has failed to explain adequately, the existence of document marked 4R2 (b), which he claims to indicate that the VRS was submitted without prejudice to his rights and entitlements as claimed in the said document. In the same paragraph the Respondent has pleaded a document marked 4R2 (a), which is not filed of record.

By application marked P7, dated 22/10/2004, the Respondent has clearly accepted the VRS with no further claims from the Petitioner, and as such the said application was duly accepted by the Petitioner. The application dated 06/09/2004,

marked 4R2 (b) was submitted before the application for VRS, marked P7. In the circumstances, it is clear that the 4<sup>th</sup> Respondent accepted the said VRS with no further claims from the Petitioner as reflected in the last paragraph of the said application, and therefore the 4<sup>th</sup> Respondent should be denied of any further claim.

I also note the following in respect of documents marked 4R2 (b) and 4R3;

- Document marked 4R2 (b) dated 06/09/2004, is a photo copied document which has not been duly certified. The space where the Petitioner Authority endorses the application to certify acceptance of application is left blank. The said document bears a rubber stamp of the Petitioner Authority which is dated 27/08/2004, which is a date prior to the date of the purported application.
- Document marked 4R3 dated 03/12/2004, is also a photo copy which is not duly certified. The said document has no endorsement of acceptance by the Petitioner Authority. There is also no clear date of acknowledgement of the document by the Petitioner.

As observed above, the 4<sup>th</sup> Respondent has failed to certify the copies of the documents annexed to the Petition and therefore, has not complied with rule 3 (1) (a) of the Court of Appeal rules of 1990, which amounts to a fatal irregularity.

For all the above reasons, I hold that documents marked 4R2 (b) and 4R3, cannot be relied upon to justify the 4<sup>th</sup> Respondents purported rights and entitlements and as such, are rejected. Therefore, I find that the Petitioners application has merit and should be allowed.

Therefore, in the absence of any ground for reference to Arbitration, I hold that the said reference is bad in law and therefore, I issue a mandate in the nature of writ of Certiorari to quash the reference made by the 1<sup>st</sup> Respondent in terms of section 4(1) of the Industrial Disputes Act, contained in document marked P10, and also to quash the Arbitral award made by the 3<sup>rd</sup> Respondent as contained in Gazette Notification marked P11, as prayed for in terms of paragraph (b) and (c) of the Petition.

Petition is allowed without costs.

JUDGE OF THE COURT OF APPEAL

**P. Padman Surasena, J. (P/CA)**

I agree.

PRESIDENT OF THE COURT OF APPEAL