

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

**C. A. Writ Application No.  
107/2014**

In the matter of an application for a  
mandate in the nature of Writ of  
Certiorari and Mandamus in terms  
of Article 140 of the Constitution

**J. L. Morison Son & Jones  
(Ceylon) PLC,**  
No. 618, 620,  
Biyagama Road,  
Pethiyagoda,  
Kelaniya

(Registered address at Hemas  
House, 75, Braybrooke Place,  
Colombo 02)

**PETITIONER**

**VS**

**1. J. H. M. A. B Tennakoon,**  
No. 45, Lenchiyawatta  
Road, Ragama.

**2. Herath Yapa,**  
Commissioner General of  
Labour  
Labour Secretariat,  
P. O. Box No. 575,  
Colombo 05

**2(a). Mrs. M. D. C.  
Amaratunga,**  
Commissioner General of  
Labour,  
Labour Secretariat,  
P. O. Box No. 575,  
Colombo 05

**2(b). Mr. R. P. A. Wimalaweera**  
Commissioner General of  
Labour,  
Labour Secretariat,  
P. O. Box No. 575,  
Colombo 05

**3. Commissioner of Labour,**  
Termination of Services Unit,  
Labour Secretariat,  
P. O. Box 575,  
Colombo 05

**4. W. M. D. R. Weerakoon,**  
Assistant Labour  
Commissioner,  
Termination of Services Unit,  
Labour Secretariate,  
P. O. Box 575,  
Colombo 05

**RESPONDENTS**

**BEFORE** : **M. M. A. GAFFOOR, J.**

**COUNSEL** : Uditha Egalahewa, PC with Vishva Vimukthi for  
the Petitioner

Anusha Fernando, SDG for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>  
Respondent

**WRITTEN SUBMISSIONS**

**TENDERED ON** : 29.08.2018 (by both parties)

**DECIDED ON** : **12.12.2018**

\*\*\*\*\*

**M. M. A GAFFOOR, J.**

The Petitioner is an incorporated company under the companies Act No. 07 of 2007 and the 1<sup>st</sup> Respondent was an employee appointed as a Field Sales Manager by a letter of appointment dated 22<sup>nd</sup> February 2013 (marked as "P3") with the effect of 18<sup>th</sup> February 2013.

The 1<sup>st</sup> Respondent's services were terminated by the Petitioner through the letter of termination dated 16<sup>th</sup> August 2013 (marked as "P4") effective from 19<sup>th</sup> August 2013 under the ground that the 1<sup>st</sup> Respondent had failed to serve the Petitioner Company to its satisfaction and failed to achieve the expected competency which was required for the 1<sup>st</sup> Respondent's confirmation. Thereafter the 1<sup>st</sup> Respondent had made a complaint against the Petitioner Company to the Commissioner General of Labour, the 2<sup>nd</sup> Respondent under the Termination of Employment of the Workmen (Special Provisions Act). The inquiry was conducted by the 4<sup>th</sup> Respondent and under 3<sup>rd</sup> Respondent's division.

The Petitioner Company has raised a Preliminary objection that the 1<sup>st</sup> Respondent did not have the continuous service period of 12 months and further stated that the Respondents had no power or authority to entertain the application in terms of Section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act) No. 45 of 1971 on the basis that the 1<sup>st</sup> Respondent was appointed subject to a probation period of six months and he failed to achieve the expected competency for the confirmation.

The Petitioner Company further submitted that the 1<sup>st</sup> Respondent was a probationary employee in the Petitioner Company and according to Termination of Employment of the Workmen (Special Provisions Act) No. 45 of 1971, a Probationer cannot entitled to seek reliefs.

At the inquiry both parties tented their written submissions and order delivered on 13<sup>th</sup> March 2014, it dismissed the preliminary objection raised by the Petitioner Company and proceeded to hear the substantial matter.

The facts that germane to the issue is the applicability of Section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act) No. 45 of 1971 as amended by the Act No. 51 of 1988 in relation to the 1<sup>st</sup> Respondent's termination by the Petitioner Company and whether he comes under the protection of the Act.

Section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act) No. 45 of 1971 reads as follows:

*“the provision of this Act, other than this section, shall not apply,*

*(a) .....*

*(b) to the termination of employment of any workman who has been employed by an employer for a period of less than one year.*

*(i).....*

*(ii)....*

*(iii)....*

*(iv)...*

*(v)...*

*(vi)....*

*In the continuous period of 12 months, commencing from the date of employment, if such termination takes place within that period of 12 months or;..”*

Section 3 of the amendment No. 51 of 1988 the following words were replaced Section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act) No. 45 of 1971,

***“a period of less than one hundred and eighty days”***

It is clear that a workman had to work for a **minimum period of 12 months** according to Section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act) No. 45 of 1971 and after the amended by Section 3 of the amendment No- 51 of 1988 the **minimum period had been changed to 180 days**.

Further, it is observed that according to the provisions that the Termination of Employment of the Workmen (Special Provisions Act), it is not applicable to a workman who has been employed for a period less than 180 days and when it comes to the 1<sup>st</sup> Respondent, he served with the Petitioner Company from 18<sup>th</sup> February 2013 to 19<sup>th</sup> August 2013 (182 days).

The Petitioner Company submitted that although the 1<sup>st</sup> Respondent had been employed for 182 days but did not satisfy the “minimum employment service of 12 months” and further stated that the 1<sup>st</sup> Respondent period of employment did not fall under “continuous period of 12 months, commencing from the date of employment.”

The Respondents submitted that, according to the Act the 180 days constitutes the minimum period of employment, and if the purpose of the section was to insist on a person working for a full 12 months, then the requirement for working 180 days would become meaningless. Therefore the period of 12 months is required to be continuous.

Further, they stated that the above requirement does not imply that a workman must be employed for 12 continuous months, but simply ensures

that service periods in other years of employment are not taken into account in order to satisfy the minimum requirement of 180 days of employment.

And the Respondents quoted that the word “period of 12 months commencing from the date of employment if such termination takes place within that period of 12 months” are the time limits within which the above mentioned minimum period of employment must be determined.

In **CA Writ No 305/10** (CA Minutes dated 23.07.2012) the identical issue observed and the Section 3(1) (b) had clarified by Justice S. Sriskandarajah as follows:

*“The section does not contemplate that the employee should have worked for a continuous period of 12 months for the application of this law. The continuous period of 12 months is taken into consideration when giving credit to the period of absence in order to calculate the period he was employed with the employer, if an employee was in service for not less than 180 days within that twelve months, then he is entitled to seek the remedy under the said law. In these circumstances the Commissioner has quite rightly over-ruled the preliminary objection raised by the Petitioner and held the Employee is entitled to seek remedy under the said law.”*

According to the clarification given by Justice S. Sriskandarajah, I observed that the words “period of 12 months commencing from the date of employment if such termination takes place within that period of 12 months” are the outer limits to calculate the period of employment which is required under the Act.

I am of the firm view that the 1<sup>st</sup> Respondent had served 182 days of minimum period of employment and qualified and eligible to apply for relief under section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act).

I hold that the 4<sup>th</sup> Respondents' findings and the dismissal of the preliminary objection raised by the Petitioner Company was in accordance with the Section 3(1) (b) of the Termination of Employment of the Workmen (Special Provisions Act).

In the aforementioned reasons, I dismiss the Petitioner Company's application without Cost.

*Application dismissed*

**JUDGE OF THE COURT OF APPEAL**