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

In the matter of an application for Appeal from the order made by High Court Civil Appeal Holden in Central Province in the exercise of its jurisdiction under Article 154P of the Constitution

Court of Appeal Case No:
**CA (PHC) 26/2010**
HC Kandy Case No:
**Writ 14/2009**

Senarath Bandara Ekanayake,
No. 18B,
Tholambugolla,
Galewela.

**Petitioner-Appellant**

**-Vs-**

1. Matale Multipurpose Corporative Society Limited,
   No. 20, Three Storied Building,
   Bandaranayake Mawatha,
   Matale.
2. Registrar and Commissioner of Central Province,
   Department of Corporative Development of Central Province,
   Ehelepola Kumarihamy Mawatha,
   Bogambara, Kandy.

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3. K.G. Munasinghe,
   Arbitrator,
   Rojestongama,
   Nawa Thispane.

**Respondent-Respondents**

**Before** : **A.L. Shiran Gooneratne J.**

**&**

**Mahinda Samayawardhena J.**

**Counsel** : Anura Ranawaka with Oshada Mahaarachchi instructed by Gamini Herath for the Petitioner-Appellant.

Maithree Amarasinghe, SC for the 2nd and 3rd Respondents.

**Written Submissions:** By the Petitioner-Appellant on 29/08/2016 and 20/09/2018

By the 2nd and 3rd Respondents on 04/01/2019

**Argued on** : 03/12/2019

**Judgment on** : **20/12/2019**

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

The Petitioner-Appellant (hereinafter referred to as the Appellant) has invoked the jurisdiction of this Court, *inter-alia*, to have the judgment of the Civil Appellate High Court of the Central Province holden in Kandy, dated 09/02/2010, set aside and for relief in the nature of Writ of *Certiorari* to quash the decisions

contained in documents marked 'X13' and 'X10' made by the 2nd and 3rd Respondent-Respondents (hereinafter referred to as the 1st and 2nd Respondents) respectively.

The Appellant was employed as a store keeper by the 1st Respondent from 11/05/1987 to 14/02/1998. Due to a loss in stock, in store, the Appellants services were terminated on 14/02/1998 (as reflected in the impugned decision marked X10 at page 341 of the brief). The Appellant thereafter instituted action in the Labour Tribunal, where it was held that the termination of service is unjustified and accordingly, the Appellant was awarded compensation. The appeal instituted in the High Court was dismissed with a variation to the compensation awarded to the Appellant. At the time the said proceedings were pending the 1st Respondent preferred an application to the 2nd Respondent to recover the amounts due on the short fall in stock as constituted in charge No. 6.1 of the charge sheet.

The 2nd Respondent referred the said matter to Arbitration in terms of Section 58(1) of the Cooperative Societies Statute of the Central Provincial Council No. 10 of 1990. At the conclusion of the inquiry, the Arbitrator made award making the Appellant liable to pay Rs. 365,500/- . The Appellant appealed against the said award to the 2nd Respondent in terms of the said statute and after consideration, the matter was referred to a fresh Arbitration to be conducted by the 3rd Respondent. By documents marked 'R1' and as stated in proceedings marked 'R3', Appellant objected to the legality and fairness of proceeding to commence a

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fresh arbitration. At the conclusion of the said arbitration by award dated 20/09/2004, the Appellant was made liable to pay Rs. 414,865/25 together with interest thereon at 18% per annum. The above stated chronology of events are not in dispute.

The Appellant is before this Court to challenge the following that;

- the order of the Labour Tribunal and the judgment of the High Court would operate as *res-judicata* on the Arbitrator.
- the 2nd Respondent had no right in law to refer the same matter for a second Arbitration.

The main contention of the Appellant is that the orders given by the Labour Tribunal and the High Court operates as *Res Judicata* and binds the 2nd and 3rd Respondents making further orders on already determined issues and therefore, the impugned orders marked 'X10' and 'X13' are invalid in law. In support the learned Counsel for the Appellant submits that the alleged shortage of goods was inquired into and the Appellant after due process was exonerated by the Labour Tribunal and the High Court and therefore, the Arbitrator appointed by the 2nd Respondent did not have the power to re-commence proceedings since the former proceedings against the appellant would operate as *Res Judicata*.

It is not disputed that the reference to a fresh arbitration was on the identical charge No. 6.1 served on the Appellant at the inquiry held by the 2nd Respondent, where the Appellant was found guilty of the charges and accordingly,

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his services were terminated. The Appellant thereafter filed action in the Labour Tribunal against the termination of employment. With a variation to the number of years of back wages due, finality was reached in the said action in the High Court. Charge No. 6.1 of the charge sheet refers to *inter-alia,* the time period of the short fall due to misappropriation of goods and the amount to be recovered as a result of losses suffered by the 1st Respondent. The said charge quantifies the loss suffered by the said Respondent, which contemplates the alleged fraudulent act committed by the Appellant.

The learned Counsel for the Appellant relying on ***Stassen Exports Ltd. Vs. Lipton Ltd. and another (2009) 2 SLR 172,*** submits that the said case is on all fours on the issue before Court, where a judicial pronouncement would act as a bar against the 2nd Respondents authority to hear and determine a matter that had been already decided by the Labour Tribunal and the High Court. It is to be noted that in the cited case *"the dispute between the Appellant and the 1st Respondent was fully decided by the Court of Appeal on the identical questions which later came up before the 2nd Respondent".*

In this context the learned State Counsel submits that, the proceedings held before the Labour Tribunal and the Arbitrator needs to be considered in its perspective and submits that the proceedings relate to two separate and distinguishable actions brought against the Appellant. It is further submitted that *"the core issue revolves around the fact as to whether the Appellant is liable for*

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*loss of stocks subsequent to the material time period which is from 14/02/1998 to 19/02/1998".* The subsequent proceedings before the Arbitrator dealt with the issue of recovery of money which were due from the Appellant to the 1st Respondent for loss of goods after termination of service, as reflected at the time of closure of the stock account. Therefore, the impugned award marked 'X10', relating to the subsequent proceeding *inter-alia*, dealt with transactions authorized by the Appellant after his termination of service.

By order dated 27/01/2004, the learned High Court Judge has clearly identified 01/01/1998 to 19/02/1998, as the time period which the alleged offence was committed by the Appellant (at page 242 of the brief). Therefore, it is absolutely clear that the evidence considered by the learned High Court Judge covered the period subsequent to the termination of service of the Appellant, ie 14/02/1998. The learned High Court Judge in the said order held that the Appellant cannot be responsible for any short fall of stocks causing loss to the 1st Respondent subsequent to his termination of service. Soon after, the 2nd Respondent referred the same matter back to an arbitrator to inquire into the alleged loss caused by the appellant covering the period, viz., 14/02/1998 to 19/02/1998, which was already inquired into by the High Court and the Labour Tribunal.

*The term res judicata is of use to prevent frequent attempts to determine the same point. Thus, if an applicant attempts to obtain a decision from one tribunal,*

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*fails, tries later on the same point, still fails, and then seeks appeal or review, res judicata is an appropriate label to apply provided that the original decision was intra vires.* ***(Administrative Law, 2nd Ed. by P.P. Craig, pg. 489)***

It is noted that, if the Respondents were not satisfied with the said order delivered by the learned High Court Judge, the proper course of action would have been to canvass the said order in an appropriate forum, instead, the issue was referred back to a fresh arbitration.

In the written submissions filed of record, the learned State Counsel submits with approval that the subsequent arbitrator has no legal duty to consider the previous judicial proceedings.

In ***Stassen Exports Lts. Vs. Lipton Ltd. and Another (supra), Dr. Shirani Bandaranayake J.*** (as she then was) held that;

*"A Careful study of the doctrine of res judicata clearly indicates that, if the parties are allowed to re-agitate a question, which has been settled before a higher Court finally, again before a quasi judicial tribunal to make order affecting the rights of parties, then the purpose of the doctrine of res judicata would become meaningless and there would never be any finality in any dispute. Considering such practrical difficulties, P. Narayanan (Law of Trade Marks and Passing off, 5th Edition, 2000, pg. 709) had stated that,*

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*"The words 'court' and 'suit' have been given a wide interpretation and the application of the rule of res judicata has been extended to proceedings before tribunals other than courts."*

*Accordingly judicial precedent, which is part of the law of this country, is to be applied not only to Courts, but also to other Tribunals and authorities, which have the power to make orders affecting the rights of other parties. A decision of the 2nd Respondent would be binding on parties only until a decision is taken by a Court of law and the doctrine of res judicata, which enables to ensure that there would be a finality in a final determination in a dispute before Court by prohibiting the re-agitation of such disputes would become meaningless and having no force, if the identical matter, which had earlier been considered by the District Court and the Court of Appeal is to be reviewed once again by the Director-General of Intellectual Property."*

Charge 6.1 (at page 185 of the brief) clearly stipulates the time period of the offence as 01/01/1998 to 19/02/1998, which covers the period subsequent to the date of termination of service of the Appellant. Having considered the available evidence relevant to the said period, the Labour Tribunal and the High Court which had jurisdiction over the said issue made a judicial pronouncement by which the question agitated reached finality.

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I find that to re-agitate the merits of the same question decided by two previous proceedings in the Labour Tribunal and the High Court acts as *"a bar to any claim or a foundation to an action"* between the same parties.

Since the above findings would dispose of the substantive application before Court, the necessity to make a judicial pronouncement on the second issue would not arise.

Accordingly, I allow the appeal and grant relief as prayed for by the Appellant.

Appeal allowed.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**

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