

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

In the matter of an application in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka
for a Mandate in the nature of a Writ of
Certiorari.

**Court of Appeal Case No.
CA/WRT/504/19**

Ceylon Petroleum Corporation.
No. 609, Dr. Dannister de Silva Mawatha,
Colombo 09.

Petitioner

1. Hon. Ravindra Samaraweera.
Minister of Labour and Trade Union
Relations,
2nd Floor, Labour Secretariat,
Colombo - 05.

1A. Hon Dinesh Gunawardane.
Minister of Foreign Relations,
Skills Development and Labour
Relations 2nd Floor,
Labour Secretariat, Colombo -05.

1B. Hon Nimal Siripala De Silva.
Minister of Labour,
2nd Floor, Labour Secretariat,
Colombo - 05.

2. Commissioner General of Labour.
Labour Secretariat,
Narahenpita, Colombo 05,

3. S.M.S Jayawardena,
Arbitrator
No.213, 1st Lane,
Egodawatte,
Boralesgamuwa,

4. HN. Perera
No. 185/5 B, Ebert Lane,
Kaldemulla, Moratuwa,

5. Lalitha Lalani Kodithuwakku.
Hill House (A), Wewala, Hikkaduwa

Respondents

Before: M. T. MOHAMMED LAFFAR, J. and
S. U. B. KARALLIYADDE, J.

Counsel: Manoli Jinadasa with Shamalie De Silva, instructed by R. A. K.
C. Ariyarathna for the Petitioner

Srinath Perera with D. D. P. Pathirage for the 5th Respondent.

M. Jayasinghe SSC for the 1st and 2nd Respondent.

Argued on: 23.02.2022

Written Submissions on: 04.05.2022 (by the Petitioner)

Decided on: 20.07.2022

MOHAMMED LAFFAR, J.

The Petitioner in this application is seeking an Order in the nature of a writ of *Certiorari* quashing the Arbitral Award dated 24.06.2019 (marked as X10), the Gazette Extraordinary No: 2137/6 dated 19.08.2019 (marked as X10(c)) and the Interpretation of Award dated 27.02.2020 (marked as X15).

The 4th and 5th Respondents, having filed their objections, moved for a dismissal of the Petition of the Petitioner on the basis that the Arbitral award and decisions were reasonable and lawful.

By an Order dated 05.03.2013, the then Minister of Labour & Industrial Relations referred a purported industrial dispute, between the 4th and 5th Respondents of

one part and the Petitioner of the other part, in respect of the matters specified in the statement of the 2nd Respondent dated 08.02.2013, to the 3rd Respondent who was appointed Arbitrator.

The matter in dispute as stated in the statement was,

“Whether Mrs. H.N. Perera and Mrs. Lalitha Kodithuwakku (4th & 5th Respondents) have been caused unjust when promoting the workers of the Ceylon Petroleum Corporation, and if so, to what relief they are entitled?”

Following statements being filed by the 4th, 5th Respondents and the Petitioner, the Arbitration inquiry before the 3rd Respondent commenced on or about 22.04.2013 and has concluded on or about 13.02.2015. At the inquiry before the 3rd Respondent, the 4th and 5th Respondents submitted evidence. At the conclusion of the inquiry on 13.02.2015 written submissions have been tendered on behalf of all parties. By Arbitral award dated 24.06.2019, the 3rd Respondent granted the following award in favour of the 4th and 5th Respondents:

1. *Grant of back wages from 2006 to Grade A7 and back wages receivable at present from Grades A6 and A5;*
2. *A sum of Rs. 50,000/- each as legal costs.*

The Court observes that the 4th and 5th Respondents have not duly applied for promotions in a timely manner when applications were called for via internal circulars. Admittedly promotions are granted by the Petitioner only when there is a vacancy through a competitive process and also occasionally a mass scale promotion is effected due to certain other factors. The 4th and 5th Respondents referred their purported grievance, through the then Minister of Labour, for Arbitration only when they neared their age of retirement, as much as 6 months and 1 ½ years to the age of retirement respectively. They did not complain against the non-grant of promotions at the relevant time, if they were entitled to any. Both purported grievances are guilty of severe laches considering the allegation that the promotions were supposed to have been granted decades ago.

In this regard, the Court observes C. D Field's statement from "Law Relating to Estoppel"¹ which reads as follows:

*"Acquiescence or standing by when there is duty to speak or assert a right creates an estoppel."*²

Attention of this Court was drawn towards a Supreme Court case which involves the 4th and 5th Respondents; however, the said case has no relevance to this application as this Court observes that the said case was filed only to prevent promotion of certain other employees and not with regards to the application or promotion of the 4th and 5th Respondents.

The 4th and 5th Respondents in their evidence have stated that relief sought by them is to be promoted to Grade A6 and is seeking relief the salary and allowances for Grade A6.

In the above pretext, this Court also observes that throughout the Arbitral proceedings, the 4th and 5th Respondents have failed to establish that they were duly qualified and that they are entitled to the promotions awarded. They have not demonstrated that they were entitled to being promoted to grades A7, A6 and A5 in addition to their admission that they were not qualified for promotion to Grade A7. Further, it is also observed that the said Respondents do not fulfil or hold the requisite experience in an executive role. However, despite the lack of required qualifications, availability of vacancies and prayer by the 4th and 5th Respondents, the 3rd Respondent has wrongfully granted promotions up to Grade A7, beyond the relief sought by the said 4th and 5th Respondents and contrary to the facts presented before him.

I also observe that the 3rd Respondent in his Arbitral Award dated 24.06.2019 (marked as X10) has not analysed or provided any reasoning for arriving at his

¹ (3rd Edition) at p.166

² The aforesaid quote has been accepted with approval on the doctrine of estoppel in the case of N K D LalithaPadmini & Others vs N. K. D. Pradeepa Kumari in SC/HC/CA/LANo. 134/2016 decided on 07.09.2018

conclusion. The final decision has merely been conveyed without any form of reasoning. Furthermore, the said award has been pronounced on 24.06.2019 i.e. 4 years and 4 months after the termination of proceedings on 13.02.2015. Even though the 3rd Respondent has stated that unavoidable personal grounds caused such delay, I observe that the said reasoning does not justify such immense lapse of time. The delay without any proper reasoning for the decision arrived at, only warrants the question of steadfastness of the decision so conveyed by the 3rd Respondent.

It is my view that the 3rd Respondent has failed to duly exercise his duty cast upon him to carefully analyze the facts of the case presented before him in a just and equitable manner according to law, as an Arbitrator.

H.N.G.Fernando C.J. in *Municipal Council Colombo vs Munasinghe*³ observed as follows:

"I hold that when the Industrial Disputes Act confers on an Arbitrator the discretion to make an award which is 'just and equitable', the Legislature did not intend to confer on an Arbitrator the freedom of a wild horse. An award must be 'just and equitable' as between the parties to a dispute; and the fact that one party might have encountered 'hard times' because of personal circumstances for which the other party is in no way responsible is not a ground on which justice or equity requires the other party to make undue concessions. In addition, it is time that this Court should correct what seems to be a prevalent misconception. The mandate which the Arbitrator in an industrial dispute holds under the law requires him to make an award which is just and equitable, and not necessarily an award which favours an employee. An Arbitrator holds no licence from the Legislature to make any such award as he may please, for nothing is just and equitable which is decided by whim or caprice or by the toss of a double-headed coin."

The Court in *Lanka Electricity Company (Private) Limited vs. T.Piyasoma*⁴ states as follows:

³ 71 NLR 223 at page 225

⁴ CA (Writ) Application No: 310/2017 decided on 11th September 2020

“Thus, in arriving at a decision which is both just and equitable, it is clear that the Arbitrator must act judicially and that his decision must be reasonable and rational.”

As such, I hold that the decision by the 3rd Respondent, *inter alia*, for the payment of back wages from 2006 in Grade A7 and all back wages due for Grades A6 and A5 to the 4th and 5th Respondents on the premise that they were entitled to be promoted to the said Grades A7, A6 and A5 does not merit the necessary requirements stipulated by law and is also in violation of principles of natural justice. In these respects, I hold that the impugned award is *ultra vires* and bad in law, and accordingly liable to be quashed.

For the above reasons, I proceed to allow this application.

Accordingly, a writ of *Certiorari* to quash the Arbitral Award dated 24.06.2019 (marked as X10), the Gazette Extraordinary No: 2137/6 dated 19.08.2019 (marked as X10(c)) and the Interpretation of Award dated 27.02.2020 (marked as X15) is issued as prayed for in the prayer (b) of the Amended Petition dated 27.08.2020.

I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL