

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

*In the matter of an Application for a mandate in
the nature of a writ of Certiorari and prohibition
under Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

Fits Aviation Private Limited
No. 9, Abdul Caffoor Mawatha,
Colombo 3.

Petitioner

CA/WRIT/66/2022

Vs.

1. B. K. Prabath Chandrakeerthi
The Commissioner General of Labour,
Labour Secretariat,
Narahenpta,
Colombo 5.
2. R. P. Iresha Udayangani
Deputy Commissioner General of
Labour,
Termination of Employment Branch,
Labour Secretariat,
Narahenpta,
Colombo 5.

3. P. A. S. C. Pathiraja
Assistant Commissioner of Labour,
District Labour Office,
Negombo.
4. D. M. R. Bandara
Labour Officer,
District Labour Office,
Negombo.
5. A. H. M. N. Hettiarachchi
No. 5, Halgasthota,
Katunayake.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Delan de Silva with M. Rukshan Mendis for the Petitioner.

A. Jayakody SC for the 1st to 4th Respondents.

Supported on : 23.01.2023

Written Submissions: Petitioner - 28.02.2023

1st to 4th Respondents - 07.03.2023

Decided on : 28.03.2023

Sobhitha Rajakaruna J.

The Petitioner seeks for a writ of Certiorari quashing the Order/Notice, marked 'P6', issued by the 1st Respondent-Commissioner General of Labour. By 'P6' the 1st Respondent has decided that the Petitioner has terminated the services of the 5th Respondent without the consent of the 5th Respondent and also without prior approval of the 1st Respondent as required by Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, as amended ('TEWA'). Further, the Petitioner has been directed to reinstate the 5th Respondent with effect from 01.12.2021 without break of service.

The 5th Respondent has been employed by way of a fixed term contract of employment dated 18.11.2016. Such contract specifically stipulates that it will be operative only until 20.11.2017. It appears that the said contract has been renewed and the services of the 5th Respondent has been terminated during the pendency of such period of renewal. It is no doubt that such termination has taken place not on disciplinary grounds but by Petitioner using his discretion by virtue of Clause 13 of the said contract which deals with termination of services.

The contention of the Petitioner is that in view of Clause 13.2 of the Contract, such employment can be terminated by either party giving to the other one month's notice thereof or one month's salary in lieu of such notice. Thus, the Petitioner argues, the requirement of consent of the workman under Section 2 of TEWA is duly embodied in the said Clause 13.2 enabling the Petitioner to terminate the services only by giving one month's notice.

As opposed to such arguments, the 1st to 4th Respondents assert that the 5th Respondent is covered by the provisions of TEWA and thus, the Petitioner has failed to follow the mandatory provisions of Section 2 of TEWA. The Respondents rely on the judgements of *Hiddelarachchi vs. United Motors Lanka Ltd., and others (2006) 3 Sri. L.R. 411* and *Lanka Multi Moulds (Pvt) Ltd vs. Wimalasena, Commissioner of Labour and others (2001) 3 Sri. L.R. 301*.

Anyhow, I should draw my attention to the precedent announced by the Supreme Court in the Appeal [(2003) 1 Sri. L.R 143] from Court of Appeal in the above *Lanka Multi Moulds (Pvt) Ltd vs. Wimalasena, Commissioner of Labour and others case* where the Court has held

that the “Prior consent” required by section 2(1)(a) of the TEWA need not necessarily be contained in a single sheet of paper; it could be inferred from the attendant circumstances in each case. Thus, the applicability of the precedent laid down by those judgements to the instant Application need to be examined in the perspective of the true nature of the question of the instant Application.

The alleged consent expressed by the 5th Respondent to terminate his services based on the provisions of the said Agreement would come into effect upon a notice by either party, will be a significant issue in this case.

Hence, a question arises in the instant Application, whether such consent on its own would fulfil the requirement of obtaining the consent of the workman as stipulated in the Section 2 of TEWA. I take the view that the defence of the 5th Respondent is also need to be considered when arriving at a conclusion of the relevant questions of the instant Application but it is noted that the 5th Respondent was absent and unrepresented when this matter was taken up for support. Although, the learned State Counsel who appears for the 1st to 4th Respondents moves that the instant Application be dismissed in limine at the threshold stage, I take the view that the questions of the instant Application need to be assayed at a trial hearing without prejudice to the stand taken by the Respondents.

In the circumstances, this Court should fully consider the facts and circumstances of this case on affidavits at a final hearing after issuing formal notice of this Application on the Respondents.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal