

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

In the matter of an Application for an Order  
in the nature of a Writ of *Certiorari* under  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0453/2019**

Sri Lanka Broadcasting Corporation  
PO BOX 574,  
Colombo 07.

**Petitioner**

**Vs**

1. K.L.C Harendra  
No.650/A/3,  
Arawwala,  
Pannipitya
  
2. A.Wimalaweera  
The Commissioner General of Labour,  
Labour Secretariat,  
Narahenpita,  
Colombo 5.
  
3. Ravindra Samaraweera,  
The Minister of Labour and Trade Union  
Relations,  
Labour Secretariat,  
Colombo 5

4. S. Kariyawasam,  
75, Melpitiya,  
Matale

5. R.M.A.Adhikari,  
The Registrar,  
Industrial Court, 9th Floor,  
Labour Secretariat,  
Colombo 5.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: D. Jayakody, instructed by H. Manuhena for the Petitioner.  
Ms. A. Gajadeera, SC for the 2<sup>nd</sup>, 3<sup>rd</sup> & 5<sup>th</sup> Respondents.

Argued on: 01.02.2023

Written Submissions on: 02.05.2023 (By the Petitioner)  
03.05.2023 (By the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup>  
Respondents)

Decided on: 31.05.2023

**MOHAMMED LAFFAR, J.**

The Petitioner by the amended Petition seeks, *inter-alia*, a Writ of Certiorari quashing the award of the Arbitrator marked X11 and the Gazette Extra Ordinary marked as X13 containing the said award on the basis *inter-alia* that the Arbitrator has exceeded the mandate given to him by the reference and the findings are not supported by evidence adduced before him.

Upon receipt of the complaint made by the 1<sup>st</sup> Respondent an alleged industrial dispute arose between the Petitioner and the 1<sup>st</sup> Respondent by not promoting the 1<sup>st</sup> Respondent to the substantive post commensurate to his qualifications and experience, the Commissioner General of Labour called the parties to explore the possibilities of resolving the dispute. Failing the settlement of the dispute, the Minister of Labour, under section 4 (1) of the Industrial Disputes Act (as amended) made a reference to Arbitration (4<sup>th</sup> Respondent-Arbitrator) which is marked as X10 (m). The said reference reads as follows;

*“Whether Mr. K.L.C. Harendra who is working as the Acting Controller of the Sales Promotion Division of the Sri-Lanka Broadcasting Corporation has been caused injustice by not being confirmed in the post of Controller of the Sports Division and if so, to what reliefs he is entitled.”*

At the inquiry before the Arbitrator, both parties adduced oral and documentary evidence. The 1<sup>st</sup> Respondent filed written submissions and the Petitioner opted not to tender written submissions. After inquiry, the Arbitrator had come to a finding that the 1<sup>st</sup> Respondent has been caused an injustice by not confirming him in the post of Controller Sports. The Arbitrator has also come to a finding that although the Petitioner proposed a settlement to appoint the 1<sup>st</sup> Respondent to the post of Sports Controller with back wages effective from 18-02-2013, the 1<sup>st</sup> Respondent ought to have been appointed to the said post from the date he was acting in the said post since 2009. It was further decided by the Arbitrator that if such a post, namely the Sports Controller does not exist in the Carder, the 1<sup>st</sup> Respondent is to be appointed to the post of Director (Sales and Promotions) with effect from the same date with back wages, enabling him to supervise the work in the Sports Division.

First of all, I have to ascertain whether the Arbitrator has exceeded the mandate given to him by the reference. In terms of the reference marked X10 (m) the Arbitrator had been directed to decide as to whether the

Petitioner has caused injustice to the 1<sup>st</sup> Respondent by not confirming the latter in service. If it is so, the Arbitrator had been further directed to decide the reliefs to be given to the 1<sup>st</sup> Respondent. Admittedly, in terms of the evidence adduced, the Arbitrator has rightly determined that the 1<sup>st</sup> Respondent has been caused injustice. Thereafter, as per the reference, the Arbitrator is empowered to decide the suitable reliefs to be granted to the 1<sup>st</sup> Respondent. Having scrutinized the evidence adduced, the Arbitrator has given the aforesaid reliefs to the 1<sup>st</sup> Respondent. At this juncture, it is pertinent to be noted that the Petitioner had proposed a settlement before the Arbitrator, to promote the 1<sup>st</sup> Respondent to the post of Sports Controller with effect from 18-02-2013. In these respects, it is the view of this Court that the Arbitrator has not exceeded the mandate given to him by the reference.

As such, the central issue to be decided by the Arbitrator was the date from which the back wages were to be calculated. The Arbitrator has rightly drawn his mind to the document marked X9 (p) which was also produced as A13 in the Arbitration Proceedings (Board Paper). As per the said document, the 1<sup>st</sup> Respondent has been acting as a Sports Controller since 2009. Moreover, in terms of the evidence adduced by the 1<sup>st</sup> Respondent, it was well established that the Petitioner by conduct and practice has recognized the 1<sup>st</sup> Respondent as the Sports Controller in official correspondence, since 2009.

In this scenario, there is a duty cast upon the Petitioner to justify the reasons for the inability to confirm the 1<sup>st</sup> Respondent in the post of Sports Controller whereas the Petitioner failed to do so. It is pertinent to be noted that the Petitioner failed to produce the Scheme of Recruitment before the Arbitrator to establish its contention that the Sports Controller/Director Sports is non-existence. In the absence of the Scheme of Recruitment, the Arbitrator has no option but to make an order to confirm the 1<sup>st</sup> Respondent either to the post of Sports Controller or Director Sports. It is surprising to me that there is no Scheme of Recruitment at the Petitioner Corporation as per the evidence given by the Officers of the Petitioner. At this point, under section 114 (f) of the Evidence Ordinance, the Court can draw the presumption that, had the Petitioner produced the Scheme of Recruitment such evidence would have been unfavourable to the case of the Petitioner.

It is also to be noted that the Petitioner without any reason failed to file its written submissions and marked documents before the Arbitrator and therefore, the Arbitrator having scrutinized the oral and documentary evidence produced before him made a just and equitable Award.

In those circumstances, I see that there is no basis to quash the Arbitration Award marked as X11 and the Extra Ordinary Gazette marked X 10 (m) containing the said Award. Thus, the application is dismissed. No costs.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**