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

Court of Appeal Case No:
CA (PHC) 191/2017

PHC of Southern Province Holden in
Galle Case No:
03/15/Rev

LT. Galle Case No:
LT/04/G/56/2013

Kankanam Hewage Prageeth Maduranga Pemachandra
No. 162/1A,
Diviyagahawela,
Karandeniya.

Applicant

Vs.

1. The Manager,
   Divithura Watta,
   Eathkadura.

2. Elpitiya Plantations PLC,
   No. 305,
   Aitken Spence Tower,
   Vauxhall Street,
   Colombo 02.

Respondents

AND

1. The Manager,
   Divithura Watta,
   Eathkadura.

2. Elpitiya Plantations PLC,
   No. 305,
   Aitken Spence Tower,
   Vauxhall Street,
   Colombo 02.

Respondent-Petitioners

Kankanam Hewage Prageeth Maduranga Pemachandra
No. 162/1A,
Diviyagahawela,
Karandeniya.

Applicant-Respondent

AND NOW BETWEEN

Kankanam Hewage Prageeth Maduranga Pemachandra
No. 162/1A,

Diviyagahawela,
Karandeniya.

Applicant-Respondent-Appellant

1. The Manager,
   Divithura Watta,
   Eathkadura.

2. Elpitiya Plantations PLC,
   No. 305,
   Aitken Spence Tower,
   Vauxhall Street,
   Colombo 02.

Respondent-Petitioner-Respondents

Before:	**Prasantha De Silva, J.**
	K.K.A.V. Swarnadhipathi, J.
Counsel:	Chamara Nanayakkarawasam AAL with Dinuka Fernando AAL, for the Applicant-Respondent-Appellant
	Samantha Vitharana AAL with Hiranya Fernando AAL for the Respondent-Petitioner-Respondents
Written Submissions: filed on	Written submissions filed on 25.05.2023 by Applicant-Respondent-Appellant
	Written submissions filed on 22.05.2023 by Respondent-Petitioner-Respondents
	Parties agreed to dispose the matter by way of written submissions
Delivered on:	28.08.2023

Prasantha De Silva J.,

Judgment

The Applicant namely Kankanam Hewage Prageeth Maduranga made an application to the Labour Tribunal of Galle in case bearing No. LT/04/G/SG/56/2012 against the Respondents in terms of Section 13B (1) of the Industrial Disputes Act No. 43 of 1950 as amended.

It appears that when this matter was taken up for inquiry on 20.08.2014, the parties explored the possibility of a settlement. Consequently, on 21.11.2014 parties reached a settlement, and terms of settlement were entered accordingly by the Labour Tribunal.

According to the terms of settlement, Applicant was reinstated at the same salary scale with effect from 01.12.2014 at the 'Ketandala Estate' managed by the 2nd Respondent, and the Applicant had agreed, not to claim salaries for the non-working period.

It was submitted by the Respondents that the applicant had failed to report for work as agreed upon according to the terms of settlement entered on 22.12.2014.

Subsequently, Applicant sent a telegram to the Respondents and informed them that he would report for work on 26.12.2014.

The Respondents had filed a motion on 28.02.2015 seeking to call the case in the Labour Tribunal of Galle, since the applicant had suppressed and misrepresented the material facts in respect of the settlement agreement.

However, the learned President of the Labour Tribunal refused to entertain the motion filed by the Respondents by his order dated 09.07.2015.

Being aggrieved by the said Order Respondents had invoked the Revisionary Jurisdiction of the Provincial High Court of the Southern Province holden in Galle.

It is seen that the Respondents filed the said motion dated 28.02.2015 before the Labour Tribunal seeking to set aside the terms of settlement entered on 21.11.2014 on the basis that the Applicant had joined an identical plantation company called 'Kelani Valley Plantation PLC' and also the Applicant was attached to 'Ganepalle Estate' five months prior to the application made to the Labour Tribunal by the applicant.

Therefore, the Respondents had contended that the Applicant had suppressed and misrepresented material facts in entering into the aforesaid settlement.

The Learned Provincial High Court Judge, after hearing the application of the Respondents by his order dated 07.11.2017 allowed the said revision application and set aside the Order of the President of the Labour Tribunal dated 21.11.2014. The Learned Provincial High Court Judge had further ordered to hold an inquiry to ascertain whether the Applicant was working at the Kelani Valley Plantation PLC at the time of making the application to the Labour Tribunal.

Being aggrieved by the order of the learned Provincial High Court Judge the Applicant-Respondent-Appellant [hereinafter sometimes referred to as the 'Appellant'] had preferred this appeal to the Court of Appeal.

When this matter came up before this court, Counsel for the Respondent-Petitioner-Respondents [hereinafter sometimes referred to as the 'Respondents'] raised a preliminary objection with regard to the maintainability of this appeal.

Accordingly, by way of a preliminary objection, Respondents challenged the Jurisdiction of the Court of Appeal to hear this case. The question raised by the Respondents is as follows,

> ***'Whether the Court of Appeal has jurisdiction to hear and determine this appeal in respect of the Industrial Dispute matters when an order was made by the Learned High Court Judge of the Provincial High Court of Galle'***

The said preliminary objection has been raised by the Respondents with regard to the maintainability of the revision application filed against the judgment pronounced by the Provincial High Court exercising Civil Appellate Jurisdiction under Section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Amending Act No. 54 of 2006.

When the issue was raised before the court, both parties agreed to dispose of the preliminary objection by way of written submissions.

Since this is a pure question of law regarding whether the Court of Appeals can hear and determine an appeal emanating from the Provincial High Court exercising its revisionary jurisdiction on a labour matter, I have analysed below the applicable law in detail.

The concept of Provincial High Courts was introduced by the 13th Amendment to the Constitution under Article 154P of the Constitution [reproduced below].

> ***Article 154P: (1)*** *There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.*
>
> ***(3)*** *Every such High Court shall –*
>
> > *(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

(c) exercise such other jurisdiction and ***powers as Parliament may, by law, provide.***

Furthermore, according to Article 156P(6),

(6) *subject to the* ***provisions of the Constitution and any law,*** *any person aggrieved by a final* ***order, judgement or sentence of any such Court,*** *in the exercise of its jurisdiction under* ***paragraphs (3)(b) or (3)(c) or (4)*** *may appeal* ***there from to the Court of Appeal in accordance with Article 138.***

Pursuant to Article 154P(6), appeals lie to the Court of Appeal from orders and judgments of the Provincial High Court where it exercises appellate or revisionary jurisdiction against a decision by the Magistrate's Court, or Primary Court [Article 154P(3)(b)], or where the Provincial High Court was exercising jurisdiction conferred by any law [Article 154P(3)(c)], or where the Provincial High Court was exercising writ jurisdiction [Article 154P(4)].

The term any law in the above Articles also includes the High Court of the Provinces (Special Provision) Act No. 19 of 1990 (as amended) and the Industrial Disputes Act.

The appellate and revisionary jurisdiction on orders of the Labour Tribunal was vested with the Provincial High Court by Section 3 [reproduced below] of the Act No. 19 of 1990 and by Section 31D of the Industrial Disputes Act.

"Section 3: A High Court established by Article 154P of the Constitution for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province."

It was the submission of the Appellant that under Article 154P(6) of the Constitution, the Court of Appeal has jurisdiction to hear and determine an appeal from the Provincial High Court exercising its revisionary jurisdiction.

On the contrary, the Respondents had submitted that Article 154P should be read with provisions of the Industrial Disputes Act No. 43 of 1950 (as amended) as it is the most specific law applicable in this respect.

Furthermore, the appeal procedure against judgments of the Labour Tribunal is given in the Industrial Disputes Act No. 43 of 1950 (as amended). As such, the Industrial Disputes Act takes precedence over the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as it is the more specific law by application of the maxim '*generalia specialibus non derogant' (the provisions of a general statute must yield to those of a special one).*

The relevant provisions of the Act introduced by Amendment Act No. 32 of 1990 are analysed below in order to understand the statutory framework introduced by the Industrial Disputes Act.

Accordingly, Section 31D(3) [reproduced below] of the Industrial Disputes Act which is the more specific law states that an appeal from the Labour Tribunal lies to the Provincial High Court.

> (3) Where the workman who, or the trade union which, makes an application to a labour tribunal, or the employer to whom that application relates is dissatisfied with that application relates is dissatisfied with the order of the tribunal on that application, such workman, trade union or employer may, by written petition in which the other party is mentioned as the respondent, appeal form **that order on a question of law**, to the **High Court established under Article 154P of the Constitution**, **for the Province** within which **such labour tribunal is situated**.

As such, an appeal from the Labour Tribunal lies to the Provincial High Court established under Article 154P of the Constitution within the province within which such Labour Tribunal is situated.

An appeal for an order/judgment given by such Provincial High Court lies directly to the Supreme Court according to section 31DD(1) [reproduced below] of the Industrial Disputes Act.

> *Section 31DD(1): Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P Of the Constitution, in the exercise of the appellate jurisdiction vested in it by law* ***or in the exercise of its revisionary jurisdiction vested in it by law****, in relation to an order of a labour tribunal,*

may appeal ***there from to the Supreme Court with the leave of the High Court or the Supreme Court first had an obtained****.*

According to Section 31DD(2) [reproduced below], the Supreme Court has ***sole and exclusive jurisdiction*** *[emphasis added]* over by way of an appeal over **any order** made by a Provincial High Court. When read with section 31DD(1), it is apparent that the term 'any order' includes both orders made in revision and orders in appeals by the Provincial High Court. Thus, it is evident that the Supreme Court has exclusive jurisdiction over any order made by the Provincial High Court, whether it be an order in a revision application or an order in an appeal made by the Provincial High Court in terms of the provisions of the Industrial Disputes Act.

> *(2) The Supreme Court shall, **have sole and exclusive cognizance by way of appeal from any order made by such High Court**, in the exercise of the jurisdiction vested in such High Court by subsection (3) of section 31D, and it may affirm, reverse or vary any such order of such High Court and may issue such directions to any labour tribunal or order a new trial or further hearing in any proceedings as the justice of the ease may require and may also call for and admit fresh or additional evidence if the interests of justice so demands and may in such event, direct that such evidence be recorded by such High Court or any labour tribunal.*

It was the contention of the Respondents' that according to Section 31DD(1) of the Industrial Disputes Act, an appeal against a judgment of the Provincial High Court lies directly to the Supreme Court after obtaining leave first and that the Court of Appeal has no jurisdiction to hear such appeals.

As noted above, it is clearly stated under section 31DD(1) of the Industrial Disputes Act that appeal lies from the judgment of the Provincial High Court made in an appeal or a revision application to the Supreme Court and that such jurisdiction of the Supreme Court is exclusive.

Thus, this court is of the opinion that in following a literal rule of interpretation, the Industrial Disputes Act, being the specific law applicable has only allowed appeals from a Provincial High Court to be filed directly before the Supreme Court after first obtaining leave and that the Court of Appeal has no jurisdiction to hear such an appeal.

Following the literal rule of interpretation, one has to give effect to the plain meaning of the words in the statue, as held by Lord Diplock in the case of ***Duport Steel v Stirs*** (19980) 1 WLR 142;

"Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse to give effect to its plain meaning because they consider the consequences of doing so would be inexpedient, or even unjust or immoral."

This dictum by Lord Diplock has been cited in many Sri Lankan case law including, in the case of ***Balasooriya Mudiyanselage Soorathunga Balasooriya v Saman Piyasiri and Others*** **(2012) CA (Writ) No. 342/2012** CAM 29.04.2019 by Justice A.H.M.D. Nawaz,

In **Craies on Statute Law (7th Edition), Universal Law Publishing** it is stated that:

> *"Strictly speaking there is no place for interpretation or construction except where the words of statute admit two meanings. As Scott LJ said: Where the words of an Act of Parliament are clear, there is not room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute... The cardinal rule for the construction of an Act of Parliament is that they should be construed according to the intention expressed in the Act themselves.*

As such, the intention of the legislature is quite clear from the plain meaning of the terms stated in the Act, which is that any judgment/order made by the Provincial High Court under the Industrial Disputes Act can only be canvassed before the Supreme Court by way of a leave to appeal application.

A contrary interpretation of the above provisions was contended by the Respondents relying on the case of ***Gunarathna v Thambiyagam 1993 2 SLR 355*** where it was held that,

> *(1) The right of appeal is a statutory right and must be expressly created and granted by statute.*
>
> *(2) S. 9 of Act No. 19 of 1990 does not give a right of appeal to the Supreme Court from an order of the High Court in the exercise of its revisionary jurisdiction.*

It was the Respondents' submission following the ratio in the above judgment that as Section 9 [reproduced below] of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 has not provided for an appeal against a judgment given in revision by the Provincial High Court to the Supreme Court and therefore, the Supreme Court has no such power to hear such appeals, and thus the appeal should lie to the Court of Appeal.

Section 9: ***Subject to the provisions of this Act <u>or any other law</u>,*** *any person aggrieved by (a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law,* ***may appeal there from to the Supreme Court if the High Court grants leave to appeal to the Supreme Court*** *ex mere moto or at the instance of any aggrieved party to such matter or proceedings:*

Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the ease or matter is fit for review by the Supreme Court:

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance ; and (b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article154P of the Constitution may appeal therefrom to the Court of Appeal.

However, it is evident from section 31DD(1) and section 31DD(2) of the Industrial Disputes Act that the right to appeal has been expressly given to the Supreme Court from any order made by the Provincial High Court against an order/judgement from a Labour Tribunal within the province. Furthermore, regardless of the interpretation of section 9 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990, the specific Act that applies, which is the Industrial Disputes Act, allows for an appeal from a revision application and has clearly stated that the jurisdiction of the Supreme Court on any order of the Provincial High Court is exclusive [section 31DD(2)]. Therefore, it is evident that the exclusive jurisdiction of the Supreme Court to hear appeals from <u>any order</u> made by a Provincial High Court under the Industrial Disputes Act has not been considered in the above case.

Furthermore, the court in the above judgement has not considered the first line of section 9, which clearly states that the provision applies '***Subject to the provisions of this Act <u>or any other law</u>…'***. Whereas 'any other law' includes the Industrial Disputes Act, which has clearly

provided for an appeal to the Supreme Court from a judgement/order given in a revision application by the Provincial High Court.

It is noteworthy that a five-bench judgement of the Supreme Court in the case of ***Bulathsinhala Arachchige Indrani Mallika V Bulathsinhala Arachchige Siriwardane of Dummalasooriya, SC Appeal No 160/2016 [SC Minutes 02.12.2022]*** held that, judicial precedent which is given in ignorance of the law should not be followed.

Mahinda Samayawardhena, J. stated the following in the said judgement [at 20],

> *"Hence, a decision per incuriam is one given in ignorance or forgetfulness of the law by way of statute or binding precedent, which, had it been considered, would have led to a different decision…*
>
> *[…]*
>
> *In the name of certainty in law, which is the main objective to be achieved by the doctrine of stare decisis, we must not perpetuate error. Justice Soza at page 410 [Ramanathan Chettiar v. Wickramarachchi and Others [1978-79] 2 Sri LR 395] emphasises this in the following manner:*
>
> > *The doctrine of stare decisis is no doubt an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs as well as a basis for orderly development of legal rules. Certainty in the law is no doubt very desirable because there is always the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into. Further there is also the especial need for certainty as to the criminal law. While the greatest weight must be given to these considerations, certainty must not be achieved by perpetuating error or by insulating the law against the currents of social change. When the precedent is plainly and admittedly wrong, the obligation to follow ceases because then the judge has a greater obligation to preserve the rule of law.*
> >
> > *There cannot be any difficulty in understanding the underlying rationale: in order to be a binding precedent, the judgment must be according to the law."* [at 38]

Therefore, this court is not bound by a decision that was given almost 30 years ago in ignorance of section 31DD(1) and (2) of the Industrial Disputes Act.

While I agree that the position in ***Gunarathna v Thambiyagam (supra)*** maybe tenable in other instances of appeals against revision applications from the Provincial High Court, as the Industrial Disputes Act has clearly stated the contrary in relation to appeals relating to Labour matters, this court cannot follow a judgement which has been pronounced in ignorance of section 31DD(2) of the Industrial Disputes Act.

Furthermore, in the case ***Duro Pipe (Private) Ltd v Hettige Pradeep Silva and 38 Others, CA PHC 91/2015 [CAM 27.02.2017]*** an identical preliminary objection was raised regarding the maintainability of an appeal in the Court of Appeal against a judgement/order of the Provincial High Court in a labour matter, which was upheld by this Court. In the above case, the L.T.B. Dehideniya J. [H.C.J. Madawala J. concurring] interpreted section 31DD of the Industrial Disputes Act and held that,

> *"The law is very clear that the appeal against an order of the Provincial High Court does not lie in the Court of Appeal. It lies on the Supreme Court on leave being obtained from the High Court or the Supreme Court.*
>
> *It has been held by Andrew Somawansa J. (P CA) in the case of* ***Sunil Jayawardana vs. Puttalam Cement Company Limited CA (PHC) APN 265/2004 [CA Minutes dated 05.08.2005]*** *held that; "1 am not at all in agreement with the aforesaid submissions for the simple reason that the 13th amendment to the Constitution which grants appellate powers against an order made in a High Court in an industrial dispute make no provisions for granting appellate jurisdiction either by way of appeal or revision to this Court. (Court of Appeal). 1 would say the preliminary objection raised by the respondent applicant respondent is sustainable and far-reaching one cannot come to this Court for redress when the relief lies elsewhere, and this Court cannot by implication surmise or by conjecture assert itself with jurisdiction that has not been granted in law. "*

Therefore, it is clear that this court should not assert itself jurisdiction which has been left exclusively and within the cognizance of the Supreme Court, any attempt to do so would not only lead to a multitude of litigations on the same matter but may also result in confusion regarding the jurisdiction of the Supreme Court and the Court of Appeal.

Having duly considered the foregoing, I hereby affirm the Respondent's preliminary objection, leading to the dismissal of this appeal. Consequently, the Order issued by the Provincial High Court of Southern Province holden in Galle dated07.11.2017 remains valid and in force.

Therefore, the Labour Tribunal is ordered to carry out an inquiry as instructed by the learned Provincial High Court Judge of Southern Province holden in Galle with utmost haste regarding whether the Applicant was working at the Kelani Valley Plantation PLC at the time of making the application to the Labour Tribunal and to make an order on the validity of the settlement agreement pursuant to such inquiry.

The Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL