

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

In the matter of an appeal against an order of the
Provincial High Court of Negombo in the exercise
of its revisionary jurisdiction.

Court of Appeal case no. CA/PHC/91/2015

H.C. Negombo case no. HCRA/LT/354/15

Duro Pipe (Private) Ltd.

307, 2nd Floor, George R. De Silva Mawatha
Colombo 13.

**Employer Respondent – Petitioner
Appellant**

Vs.

Hettige Pradeep Silva and 38 others

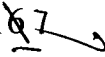
Applicant – Respondent - Respondents.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Alex Fernando with Athula Fernando for the Employer –
Respondent - Petitioner – Appellant.
: G.R.D. Obayasekara with Lal Perera for the Applicant –
Respondent - Respondents.

Argued on : 10.11.2016

Written submissions filed on : 29.11.2016 and 15 12 2016

Decided on : 27.01.2017 

L.T.B. Dehideniya J.

The Applicants Respondents Respondents (the Respondents) were workers in the Duro Pipe (Private) Ltd. they have filed several applications in the Gampaha Labour Tribunal against the Employer seeking redress for terminating their services. The Employer Respondent, Petitioner Appellant (the Employer) raised a preliminary objection on the maintainability of the application in the LT. the learned President of the LT has rejected the said preliminary objection. Being aggrieved by the said order the Employer moved in revision in the High Court of Gampaha. Later the case has been transferred to the High Court of Negombo on an administrative reason and the learned High Court Judge of Negombo dismissed the revision application. The employer being dissatisfied with the order of the Provincial High Court of Negombo presented this appeal to this Court.

The learned Counsel for the Respondents raised a preliminary objection that this Court does not have jurisdiction to entertain an appeal from an order of a Provincial High Court made on exercising appellate jurisdiction on orders of LT.

The Provincial High Courts were established under the Article 155P of the Constitution. The appellate jurisdiction was vested in Provincial High Court by paragraph 3 (b) of the said Article. High Court of Provinces (Special Provisions) Act No. 19 of 1990 governs the procedure to be followed in, and the right to appeal to, and from, the High Court established under article 154P of the Constitution.

The paragraph 3(b) of the Article 154 P reads;

(3) Every such High Court shall

(a)

(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)

The appellate and revisionary jurisdiction on orders of the LT was vested with the Provincial High Court by section 3 of the Act No. 19 of 1990 which reads;

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.

Section 31D of the Industrial Dispute Act as amended by the Act No. 32 of 1990 provides that the any person aggrieved by an order of a LT can appeal to a High Court established under Article 154P of the Constitution. The section reads;

31D.

(1) Every order made by a labour tribunal at the conclusion of proceedings on an application made under section 31B, shall be Pronounced forthwith or within a reasonable time at a sitting of the tribunal on, a date which shall be notified in advance to all the parties to such application.

(2) Save as provided in subsection (3) an order of a labour tribunal shall be final and shall not be called in question in any 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 the order of the tribunal on that application, such work man, trade union or employer may, by written petition -in which the other party is mentioned as the respondent, appeal from 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.

Section 9 of the High Court for Provinces Act No 19 of 1990 provides that an appeal from an order made in exercising appellate jurisdiction by the Provincial High Court lies in the Supreme Court. The section reads;

9. Subject to the provisions of this Act or any other law, 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 therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero moue 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 case 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 Article 154P of the Constitution may appeal therefrom to the Court of Appeal.

The section 31DD of the industrial Dispute Act as amended by Act No. 32 of 1990 the appellate jurisdiction against orders of the Provincial High Courts was vested with the Supreme Court. The section reads;

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 therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had an obtained.

(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 case 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.

(3) The Supreme Court shall hear and finally dispose of an appeal preferred to it under subsection (1), within one year of the date on which such appeal is filed in the Supreme Court.

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;

"I 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). I 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."

Under these circumstances, I uphold the preliminary objection raised by the Respondent.

The appeal is dismissed subject to costs fixed at Rs. 10,000.00

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal