Industrial Law – *Case Laws*

1.The Nature of Contract of Employment

Ready mixed concrete Ltd . V. Minister of pensions and National Insurance [1968] 1 ALL ER 433.

In this case the contract provided that, the lorry driver was an independent contractor. Lorry was available throughout the fixed period, only for delivery and carriage purposes. Lorry was painted in company's colors and driver wore a company uniform. Driver was free to decide about maintenance of the vehicle route to drive and using another's help. The chance of profit or risk of loss was within the driver. Company had the right to acquire the vehicle.

HELD: This was a contract of carriage and not contract of service.

McKenna J stated that three conditions had to be fulfilled to establish a contract of service.

- There must be an obligation of the person to provide his own skill and work in return for wage or other remuneration.
- The employer must have **sufficient degree of control.**
- The other provisions of the contract must be consistent with its being a contract of service.

Perera Vs Marikar Bawa Ltd [1989]1 SLR 347.

Perera was the head cutter of the Marikar Bawa Ltd company. He was provided with a cubicle but employed his own workmen and used his own tools. The company passed on tailoring orders to him and he was paid a commission from the collections for each month.

The company collected the payment from the customer and kept the accounts. Perera did not sign the attendance register and was not entitled to a bonus like other employees. The question was whether Perera was a workman or an independent contractor.

HELD: Perera's work was an **integral part of the company's business** and he was a part and parcel of the organization. Perera did not carry on, his own business. It was a business done for the company.

2.Types of Employment

State Distilleries Corporation Vs. Rupasinghe [1994] 2 SLLR 395.

The question of law involved in this case was whether an employee, who is not expressly confirmed in service upon the expiry of the period of probation stipulated in his contract of employment, necessarily continues to be on probation even if the employer does not expressly extend his probation.

Justice Mark Fernando expressed his view on above matter as "Although there are observations to the effect that the employer does not have to give any reasons (i.e. disclose any reasons) to the probationer; it does not mean that the employer can dismiss a probationer even if he does not have any reasons. He should disclose his reasons to Tribunal or a Court in order to determine whether the termination was mala fide if the dismissal is challenged.

An employer who refuses to disclose his reasons for dismissal cannot be in a better position than if he had no reason, and must also be regarded as having acted mala fide or arbitrarily."

HELD:

- If the probationer has satisfactorily completed the probationary period thereafter the employer has no choice.
- An employer can terminate a probationer without giving reasons, but not without having reasons.
- Prior warning /forewarning should be given during the probationary period.

G. O Buyser Vs. Harrison & Crosfield Ltd. (Para 185)

The company recruited the workman under the fixed term (written contract) for the period of three years. At the time of recruitment the company informed him that this contract is just for a formality, but he can work until the age of retirement which was 55 years.

According to the evidence the practice in the work place was recruiting the workers under fixed term contracts and thereafter keeping them until the age of retirement. But in this case the company terminated the services at the end of the fixed time period.

Court ordered compensation for the employee for the following reasons.

- Expectations were given at the time of employment to work until his retirement.
- The practice in the workplace.

3. Industrial Dispute Act

Carson Cumberbatch and Co.Ltd. Vs. Nandasena 77 NLR 73.

In this case it was held that agent was not the employer.

Justice Tennakoon,

"The person referred to as a person employing a workman in each of three limbs of the definition is intended to refer to a person who is under contractual obligation to the workman"

Thus the first limb of the definition will catch up a person who himself engages a workman and also one who engages a workman through an agent who is known to the latter to be acting as agent.

The second limb will apply to a principle on whose behalf an agent, without disclosing in existence or identity of his principal engages the services of a workman; in such a case the workman on discovering the existence and identity of the principal can hold him to the contract ;

The 3rd limb would include the type of agent who is referred to under the 2nd limb because in such a case the agent is at common law regarded as having contracted personally. "

In the present case Carsons would not fall under any limb of the definition (i.
e. the **agent is not the employer of the workman within the meaning of the term employer in SEC 48 of IDA) ;**because his company at all times declared that it was acting for Farms by using the expression for and on behalf of farms & Retail market Ltd.

Shaw Wallace and Hedges Ltd Vs. Palmerston Tea Co. Ltd[1982] 2 Sri LR 427

It was held that the definition of the employer must be read with the definition of workman.

"Any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, and oral or in writing. The existence of a contract with his employer is the *sine qua non* (an essential condition) for identifying a workman."

Therefore, in the present case the court came to the conclusion that as Shaw Wallace and Hedges (managing agents and secretaries of Palmerston Tea Co. Ltd) had acted as agent and the workman was aware of and accepted the fact, they were not the employer of the workman.

However, this definition catches up an agent when he fails to disclose the existence or the identity of his principal. This is based on common law.

4. Industrial Arbitration

Wimalasena Vs. Navaratne[1978] 2 SLR 10.

In this case, while the dispute was pending before a Labour tribunal and the minister referred the **same** dispute for the arbitration.

Court of Appeal held;

The minister had the power to refer a dispute for settlement by arbitration under the **SEC 4(1) of the IDA,** even though an inquiry was pending in the Labour tribunal regarding the same dispute, and Labour tribunal shall dismiss the case according to **SEC 31B (2)(b).**

Two situations can found when the "referred" is not clear;

- Workman has gone to labour tribunal and thereafter minister has gone to arbitration.
- Minister has gone to arbitration and thereafter workman has gone to labour tribunal.

This case was **overruled** by Upali Newspaper Ltd Vs. Eksath Kamkaru Samithiya.

Upali Newspapers Ltd Vs. Eksath Kamkaru Samithiya [1999] 3 SLR 205.

In this case the Court of Appeal and the Supreme Court interpreted **SEC 31 B (2)(b) of the IDA.**

C/A held that:

1) If the workman has gone to a labour tribunal, thereafter the minister can't refer the same matter /dispute for the arbitration.

2) If the minister has referred the dispute for the arbitration, thereafter workmen cannot go to a labour tribunal with regard to the same dispute.

Article 170 of the Constitution read with **Article 114** shows that the president of a labour tribunal is included in the definition of "judicial officer".

The combined effect of the provisions of **Article 170,114,116** is that the proposition that the minister has unlimited power under the **SEC 4(1)** which would enable him to refer a dispute which is pending before a labour tribunal to an arbitrator for settlement is **INCORRECT.** A contrary interpretation would necessarily infringe and violate the principle of independence of the judiciary enshrined in **Article 116 of the Constitution** which is the paramount law.

The decision was affirmed by the Supreme Court. Therefore the Upali Newspapers case judgement has overruled the judgment given by the court of appeal in Wimalasena case.

5.Labour Tribunal

United Engineering Worker's Union Vs. Deavanayagam 69NLR 289.

Labour tribunal will not see whether the termination is a rightful termination or a wrongful termination. Labour tribunal has a jurisdiction to consider any type of termination.

According to **SEC 31B(4)** labour tribunal is not bound by the contract of employment.

According to **SEC 31C (1)** labour tribunal will have to conduct inquiries and hear the evidence and thereafter make just and equitable orders.

SEC 31C(1) and SEC 31B(4) has given wide powers to Labour tribunal.

In this case Privy Council stated that **SEC 31B(1)b of the IDA should be interpreted in light of SEC 31B(4) and SEC 31C (1).**

Amarajeewa Case[1993] 2 SLR 327.

In this case while it was pending before a labour tribunal the workman had died. The widow could be substituted for his place to continue the case.
Compensation paid up to the date of death starting from the date of termination.

Savoy Theatres case [1982] 2 SLR 753.

Held:

Employer's heir cannot be substituted in labour tribunal proceedings.

6.Industrial court

Hayleys Ltd Vs. De Silva [1962] 64 NLR 130.

Weerasooriya J, stated that it requires the industrial court to consider every **material question involved in the dispute,** otherwise it will be an error of law.

7. Termination of Employment

Warnakulasooriya Vs. Hotel Developers (lanka) Ltd, SC Appeal 101/2014 (decided on 26-07-2018)

A female worker worked in a company for many years. She worked as the secretary to the executive chef of the hotel. In the past, in some occasions she did not report to work without the leave permission of the employer. The executive chef made complains and the company issued warning letters to her. The employee thereafter had a surgery and had medical leave approval by the company. She returned to the work after medical leave and worked in the company for some days.

Thereafter she did not come for the work about 12 days without obtaining leave. The company sent a telegram, requesting her to report to the work immediately.

She received it on Friday and weekend were holidays for the company. The following Monday she returned to work by 5.00 p. m with a medical certificate approved by the company doctor. When she returned to work on Monday the company issued the letter of vacation of post.

Thereafter she went to a labour tribunal and filed a case against termination. Finally the case came on to S/C on appeal.

The S/C stated that she didn't have the **intention to abandon her employment.** Therefore it will not be a reason for vacation of her post. The S/C ordered to pay compensation to her on the basis of 3 month salary for one year of service considering the total number of years at her service.

Jeewandarage Dayawathie Vs. Pugoda Textiles (Lanka) Ltd, S. C No 140/9.

The employee worked in the Pugoda textiles and one day she had taken some cut pieces of clothes in her handbag without permission. Cut pieces of clothes were in the discarded lots. They had no economic value to the employer. She had worked there 8 or 9 years and it was her 1st misconduct. Company had terminated her services.

The S/C held that:

Restatement without back wages (the wages from the date of termination to the final decision of the court). Punishment was deprivation of back wages.

Ceylon Cold Stores Ltd Vs. Sisil Beema Podu Seva Sangamaya[1986] CALR 342

Removal of a parcel of sugar. Held;

Termination was justified because company has economic value to sugar.

National Savings Bank Vs. Ceylon Bank Employees' Union [1982]2SLR 629.

An executive officer of the bank sat for an examination conducted by the IDSL. During the exam the employee had unauthorized materials in his possession. So his examination has been cancelled and the institute informed the matter to the bank. Thereafter bank had terminated his services.

Held:

Termination was justified for loss of confidence.

8.Reliefs for Termination

Hatton National Bank Vs. Perera [1996] 2SLLR 231.

Supreme court considered the irresponsible manner of the workman who was a senior executive of the bank, the strained relationship between the workman and the bank and the period of time between the termination and the decision which was nearly 9 years to arrive the equitable decision to award compensation as an alternative to reinstatement.

Jayasuriya Vs. Sri Lanka State Plantations Corporation [1995] 2SLR 379 at p. 409.

Amerasinghe. J stated that normally the workman has to be compensated for the loss of earnings from the date of dismissal of the final determination of the case, loss of future earnings and benefits and loss of retirement benefits.

Sri Lanka State Plantations Corporation v. Lanka Podu Seva Sangamaya, (1990) 1

Sri LR 84 at pp. 89-90

Where termination of services is found unjustified the workman is as a rule entitled to reinstatement, and that an order for payment of compensation is competent in situations referred to in sections 33 (3), 33 (5) or where such order would be otherwise just and equitable in the circumstances contemplated by section 33 (6) of the Act.

9.Termination Act

Onally Holding PLC Vs. Minister of Labour C. A. No. 843/2010.

In this case the employer has not included any clause relating to age of retirement. So the employee was 64 years of age and refused to leave from employment. The employer had terminated his services. The employee went to labour tribunal commissioner against the termination.

The Court of Appeal stated that termination of employment was illegal. Because his letter of appointment does not state his age of retirement, therefore the employer should follow the procedure under the termination act.

10. Trade Union Law

Kalamazoo Ind. Ltd v. Minister of Labour & Vocational Training (1998) 1 Sri LR 235.

Could engage in strike action for different dispute

Best Footwear (Pvt) Ltd v. Aboosally (1997) 2 Sri LR 137

Strike – last resort

Public Nurses Union v. M.Jayawickerema (1988) 1 Sri LR 229

Services were terminated for strike in essential service.

Rubberite Company Ltd v. Labour Officer, Negombo (1990) 2 SLR 42

Industrial Disputes Act section 40 – termination of employment.

Hayleys Ltd v. De Silva, 64 NLR 130

Justifies dismissal

International Cosmetic Applicators (Pvt) Ltd Case, (1995) 2 SLR 61.

Termination for go slow.

11. Workmen'sCompensation Ordinance.

Alice Nona Vs. Wickamasinghe 38NLR 408.

Death of a driver who was killed due to a fuel ignition when refueling. Held: It arouse in the cause of employment.

Dias Vs Jane Nona, 44 NLR 239.

Factory worker who slept at the superintendent's bungalow was bitten by a
snake.

Held: As it did not arise in the cause of employment.

12. Payment of Gratuity Act

Brown and Co. Ltd. Vs. Commissioner of Labour S. C. Appeal No. 84/2011.

Workman reached the age of retirement on 31.10.1986. He worked for 24 years in that company. From 1st of *November* 1986 he was employed under the fixed term contract and he worked for 19 years. He brought Rs.
540,000 as his last salary in 2006. Company had paid gratuity at a time of recruitment, which the employer had accepted. The company calculated a gratuity separately for 19 years. The employee refused to accept the calculation and argued that the total period of the service should be considered together for the calculation of gratuity, and the gratuity paid at the time of retirement will have to be deducted from the total amount and the balance should be paid.

Labour commissioner agreed with the argument of the employee. (Basically labour commissioner followed the decisions of C/A previous cases)

Then the company went to the Court of Appeal. C/A agreed with the Labour commissioner.

Again company appealed to the Supreme Court. S/C disagreed

with C/A. Held: There was a break at the time of the retirement.

S/C set two things,

- Doctrine of estoppel applies
- There was no continuous service.

Baur and Co Ltd Vs Commissioner General Labour. C. A No:1033/2005.

When employer came to know about the fraud, the employee gave the letter of resignation. Employer accepted the resignation and withheld his gratuity. The worker went to the Labour commissioner and finally came to the court of appeal.

Held: According to the **SEC 13 of the gratuity Act** the employer can't with hold the gratuity,because he was not terminated but allowed to give the letter of resignation.