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

Duro Pipe Industrial (Pvt) Ltd,
307, 2nd Floor,
George R. De Silva Mawatha,
Colombo 13.
Employer Respondent-Appellant-Appellant

SC/APPEAL/111/2022
HC/ALT/427/2020
LT NEGOMBO 21/ADDL/1051/2011 to 21/ADDL/1088/2011

Hettige Pradeep Silva,
325, Dewatagahawatta,
Negombo.
and 36 Others
Employee Applicants-Respondents-Respondents

Before: Hon. Justice P. Padman Surasena
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: Suren Gnanaraj for the Employer Appellant.
Dilip Obeyesekere with Lal Perera for the Employee Respondents.

Argued on: 03.06.2024

Written Submissions on:

By the Appellants on 22.07.2024

By the Respondents on 09.08.2024

Decided on: 02.12.2024

Samayawardhena, J.

Introduction

Thirty-seven employees filed applications before the Labour Tribunal of Negombo nearly fourteen years ago on or around 07.01.2011 under section 31B of the Industrial Disputes Act, No. 43 of 1950, as amended, alleging that their services were unjustly terminated by the appellant employer. The appellant denied this allegation asserting that the respondent employees vacated their employment voluntarily. At the commencement of the inquiry before the Labour Tribunal, the appellant took up a preliminary objection to the maintainability of the applications on the basis that the respondents could not seek reliefs from the Labour Tribunal, as they had already lodged complaints with the Commissioner of Labour on the same issue. This preliminary objection was overruled by the Labour Tribunal by order dated 27.07.2011. The appellant filed a revision application before the Provincial High Court of Gampaha against that order and the High Court dismissed the application by order dated 16.06.2015. The appellant filed an appeal against that order to the Court of Appeal and the Court of Appeal dismissed the appeal by Judgment dated 27.01.2017. The appellant prolonged the proceedings for six years by pursuing the purported preliminary objection, in my view, as a strategy to cause undue hardship to the employees. Six years after the applications were filed, the Labour Tribunal commenced the main inquiry, consolidating all the applications, on 28.03.2017. Following a

long inquiry, the Labour Tribunal delivered its order on 12.03.2020, awarding a total sum of Rs. 26,782,212.50 as compensation to the thirty-seven respondents, concluding that the appellant had unjustifiably terminated their services. The appellant decided to appeal against this order to the Provincial High Court.

However, the appellant did not file the petition of appeal within the prescribed time, nor did it furnish security to the Labour Tribunal as required by law.

The respondents took up these two objections as preliminary objections for the maintainability of the appeal before the High Court. By order dated 12.10.2021 the High Court did not uphold the objection on time bar due to the COVID-19 pandemic. On the failure to deposit security, the High Court held that the appellant shall deposit security in cash in order to prosecute the appeal. Although the objection regarding the time bar was rejected, the respondents did not appeal against the order.

The appellant then filed this appeal before this Court against the said order of the High Court, still without depositing the security. The appellant's position was that, in lieu of cash, the appellant was prepared to furnish a bank guarantee but this request was turned down by both the Labour Tribunal and the High Court.

This Court had granted leave to appeal on the question of law whether the High Court erred in law by refusing to make a decision on the appellant's application to furnish security by a bank guarantee in lieu of cash for the purpose of section 31D(4) of the Industrial Disputes Act.

Abuse of the appellate process

This is a textbook case on how appellate procedures can be abused, subverting the intention of the legislature to the detriment of the

workman and in favour of the employer, who holds unequal bargaining power.

The Law Commission of India, in its 122nd Report on the Forum for National Unity in Labour Adjudication (1987), highlighted the undesirable practice of abusing the appellate process by employers in industrial disputes. In Chapter 2.15 of the Report, referring to the Labour Appellate Tribunal in India, it stated:

> *Somehow, this Appellate Tribunal incurred the wrath of the leading national organisations of workmen. As it was inherent in the situation, the haves, i.e., the employers, were financially well off and could afford the luxury of litigation. They preferred numerous appeals to the Appellate Tribunal and, according to workmen, there was inordinate delay in the disposal of these appeals whereby the implementation of awards was held up and thereby prolonged the litigation. The workmen with their weak staying power could ill-afford such delay while on the other hand the employers protracted the litigation by casually preferring appeal and abused the inherent tendency of every judicial process, namely, delay.*

The industrial law is founded on social justice. The Industrial Disputes Act is fundamentally social welfare legislation, primarily aimed at safeguarding the rights of the workman. In interpreting such statutes, the Court has a duty to ensure that the legislative intent is preserved. However, this does not mean that the Court can totally disregard the rights of the employer, as the administration of justice is not a one-way street. As the Supreme Court of India held in *Harjinder Singh v. Punjab State Warehousing Corp* (AIR 2010 SC 1116, para 17), in doing so, the Courts are merely upholding the Constitution, not unduly favouring the workman.

> *[T]he High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - State of Mysore v. Workers of Gold Mines AIR 1958 SC 923.*

The Supreme Court further noted at para 23:

> *It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private.*

In *Caledonian (Ceylon) Tea and Rubber Estates Ltd. v. Hillman* (1977) 79(1) NLR 421 at 430, Sharvananda J. (as he then was) emphasized that the aim of industrial law is to promote social justice and eliminate socio-economic disparities and inequalities. The employer's former freedom to

hire and fire at will, guided purely by commercial interests, no longer stands in the face of industrial law, which ensures job security for employees.

> *The concept of social justice is an integral part of Industrial Law, and a Labour Tribunal cannot ignore its relevancy or norms in exercising its just and equitable jurisdiction. Its sweep is comprehensive as it motivates the activities of the modern welfare state. It is founded on the basic ideal of socio-economic equality. Its aim is to assist in the removal of socio-economic disparities and inequalities. It endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties, so that industrial disputes can be prevented. The claim of the employer, based on a freedom of contract, has to be reconciled with the claim of the employee for security of tenure; the process may involve the imposition of an obligation on the employer to make such provision as to relieve the hardship caused by the unemployment resulting from the exercise of his rights by the employer. The jurisdiction is designed to produce, in a reasonable measure, a sense of security in a worker that in case he performs his duties efficiently and faithfully, he can be discharged by the employer only with adequate compensation for loss of employment. The employee should be assured job security. He should not suffer for no fault of his. An honest worker doing an honest job is entitled to a reasonable expectation of permanency of employment. He should not be oppressed with the sense of economic insecurity. The old principle of absolute freedom of contract and the doctrine of laissez-faire have yielded place to new principles of social welfare and social justice. These principles have imparted a new dimension to the concept of justice and equality. The Labour Tribunal is one of the instruments chosen by the Legislature to achieve these objects. The freedom of*

contract which is fundamental to laissez-faire enabled an employer to 'hire and fire' the employee according to the dictates of commercial expediency. This exposed the workman to the grave hazard of unemployment. But with the erosion of laissez-faire and the emergence of modern concepts of social justice and of Labour Tribunals, geared to making just and equitable orders, the reasonably-generous-employer has been projected as the model employer, and the employee has been assured of a certain measure of job security. The absolute right of discharging the unwanted employee, without adequate compensation for loss of employment, has not survived these developments. Compensation enables the workman to face the rigours of premature retirement. Hence, on grounds of social justice, compensation is substituted for re-instatement. An employer has the right to close his business and thus render re-instatement non-feasible. But such a consequence does not relieve him from liability to compensate the employee for the resulting loss of employment.

The employees went before the Labour Tribunal as far back as 2011 seeking reliefs on the basis that their services were unjustly terminated by the employer and after several unsuccessful appeals initiated by the employer on peripheral matters, at the end of the main inquiry, the Labour Tribunal awarded compensation in 2020. However, the first appeal to the High Court is yet to be heard on the merits as there is no properly constituted appeal before the High Court up to now.

The appeal procedure under the original Industrial Dispute Act

The appeal procedure prior to the Industrial Disputes (Amendment) Act, No. 32 of 1990 required the dissatisfied party to tender the petition of appeal to the Court of Appeal within fourteen days from the date of the

order on a question of law, without any requirement for depositing security as a precondition for filing the appeal.

After the establishment of Provincial High Courts by Article 154P of the Constitution, introduced by the Thirteenth Amendment to the Constitution, section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 empowered the High Courts of the Provinces to exercise appellate and revisionary jurisdiction over orders made by the Labour Tribunals within their respective provinces.

This appellate procedure resulted in appeals being filed against every order made against the employer as a matter of routine stating that there is a question of law to be decided, regardless of whether there were substantial grounds for appeal. Consequently, due to the significant backlog of cases at all levels of the administration of justice, this practice caused serious prejudice to employees.

Industrial Disputes (Amendment) Act No. 32 of 1990

To address this issue, section 31D was repealed and replaced with a new section by the Industrial Disputes (Amendment) Act, No. 32 of 1990. Through this amendment, the legislature for the first time mandated that, in the event of an appeal, the employer shall deposit the amount awarded as compensation in cash with the Labour Tribunal as security. In cases of reinstatement, the employer is required to deposit an amount equal to twelve times the monthly salary of the workman at the time of termination. The employer shall submit a certificate issued by the President of the Labour Tribunal to that effect along with the appeal. These requirements serve as conditions precedent to filing an appeal before the High Court and form the basis for conferring jurisdiction to entertain an appeal.

Maxwell on The Interpretation of Statues, 12th Edition (1969), page 328 states:

> *Where the act or thing required by the statute is a condition precedent to the jurisdiction of a tribunal, compliance cannot be dispensed with and, if it be impossible, the jurisdiction fails. It would not be competent to a court to dispense with what the legislature has made the indispensable foundation of its jurisdiction.*

The President of the Labour Tribunal was required to deposit that money in an approved bank to accrue interest pending appeal in favour of the employee.

By this amendment Act No. 32 of 1990, new sections 31DD, 31DDD and 31DDDD were introduced to further regularize the appellate procedure.

These sections were further amended by the Industrial Disputes (Amendment) Act No. 11 of 2003, the Industrial Disputes (Hearing and Determination of Proceedings) (Special Provisions) Act, No. 13 of 2003, and the Industrial Disputes (Amendment) Act, No. 22 of 2022.

The intent of all these legislative changes was to curtail frivolous appeals and to expedite the disposal of remaining appeals.

After the Industrial Disputes (Amendment) Act No. 32 of 1990, section 31D(4) and (5) read as follows:

> *31D(4). Every employer who—*
>
> > *(a) appeals to a High Court established under Article 154P of the Constitution, against an order of a labour tribunal or makes an application in revision against any such order; or*
> > *(b) makes an application for the issue of an order in the nature of writ of certiorari, prohibition, procedendo or mandamus against*

the president of a labour tribunal, in respect of an order made by such president,

shall furnish to such labour tribunal, security in cash—

(i) in any case where the order which is the subject of such appeal or application directs only the payment of a sum of money to the workman, of an amount equal to such sum;
(ii) in any case where the order which is the subject of such appeal or application directs only the reinstatement of the workman, of an amount equal to twelve times the monthly salary or wages of such workman at the time his services were terminated;
(iii) in any case where the order which is the subject of such appeal or application directs both the payment of a sum of money to the workman and his re-instatement, of an amount equal to such sum and twelve times the monthly salary or wages of such workman at the time his services were terminated.

Where an employer is required under the preceding paragraphs of this subsection to furnish security of an amount equal to twelve times the monthly salary or wages of a workman, such monthly salary or wages shall, in the case of a daily paid workman, be deemed to be twenty-six times the daily wages of such workman.

(5) The president of every labour tribunal shall cause all moneys furnished as security under subsection (4), to be deposited in an account bearing interest, in any approved bank in Sri Lanka.

Certificate issued by the Labour Tribunal

After the Industrial Disputes (Amendment) Act, No. 11 of 2003, when an appeal, revision application, or writ application is filed against the final

order of the Labour Tribunal, the appellant or applicant, as the case may be, shall append to the petition a certificate issued by the President of the Labour Tribunal confirming that the security has been duly furnished as required by law.

Sections 31D(6) and (8) of the Act read as follows:

> *(6) Every petition of appeal to a High Court established under Article 154P of the Constitution shall bear uncancelled stamps to the value of five rupees and in every case where the applicant is required to furnish security, be accompanied by a certificate issued under the hand of the president of the labour tribunal to the effect that the appellant has furnished such security.*
>
> *(8) Every appeal or application referred to in subsection (4) shall be accompanied by a certificate issued under the hand of the President of the labour tribunal, to the effect that the appellant or the applicant as the case may be, has furnished the security which he is required to furnish under that subsection.*

The appealable period

The appealable period in section 31D of the original Industrial Disputes Act was extended by section 6 of the Industrial Disputes (Amendment) Act, No. 32 of 1990 from fourteen days to thirty days (including the date on which the order appealed from was made, but excluding Sundays and Public Holidays) from the date of the order. This time period was subsequently removed by the Industrial Disputes (Amendment) Act No. 11 of 2003, certified on 20.03.2003, and was reintroduced by section 6(1) of the Industrial Disputes (Hearing and Determination of Proceedings) (Special Provisions) Act, No. 13 of 2003, also certified on the same date, which reads as follows:

> *A petition of appeal made under section 3ID of industrial Disputes Act against an order made by a labour tribunal, shall be filed within a period of thirty days (including the day on which the order appealed from was made, but excluding Sundays and Public Holidays) of the date of the making of the order from which the appeal is preferred.*

The word "within" in this section means the application shall be presented to the Court within the specified period of thirty days and not beyond that period.

In summary, the appealable period to the High Court is thirty days from the date of the order, including the date the order was made and the date the petition of appeal is tendered to Court, but excluding Sundays and Public Holidays.

In terms of section 8(1) of the Interpretation Ordinance, if the thirtieth day coincides with a day when the office of the Court is closed, submitting the appeal on the next day when the office is open shall constitute sufficient compliance with the time limit stipulated in the section.

For completeness, it should be noted that under section 31D(9) of the Industrial Disputes Act, the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, which govern appeals from the Magistrate's Court to the Court of Appeal, are applicable to appeals filed in the High Court. Section 31D(9) reads as follows:

> *The provisions of Chapter XXVIII of the Code of Criminal Procedure Act, relating to appeals form Magistrates' Courts to the Court of Appeal shall, mutatis mutandis, apply in regard to all matters connected with the hearing and disposal of an appeal preferred under this section.*

As this Court stated in *Thennakoonwela v. Director General of Commission to Investigate Allegations of Bribery or Corruption* (SC/TAB/4/2023, SC Minutes of 07.10.2024), a final appeal cannot be filed in the High Court against an interlocutory order of the Labour Tribunal.

Appeal to the Supreme Court

Section 31DD introduced by the Industrial Disputes (Amendment) Act, No. 32 of 1990 regulates the procedure on appeal from orders of the High Court to the Supreme Court.

Section 31DD of the Act reads as follows:

> *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.*

This is reiterated in section 9(a) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

It is important to understand that, as held in *Thennakoonwela v. Director General of Commission to Investigate Allegations of Bribery or Corruption* (*supra*), an appeal lies to the Supreme Court with leave first had and obtained only against final orders of the High Court.

As evidenced by the caption of the petition of appeal filed in this Court, the appellant filed this appeal under section 31DD of Industrial Disputes Act and section 9(a) of High Court of the Provinces (Special Provisions) Act, No. 19 of 1990. There cannot be any dispute that the impugned order

of the High Court is not a final order but an interlocutory order. Therefore, I must state that this appeal (though filed with leave obtained) is misconceived in law, as no appeal under those sections can be filed before the Supreme Court against interlocutory orders.

In order to discourage frivolous appeals being filed by employers in the Supreme Court against orders of the High Court to obstruct the final determination of the matters, the legislature, by Industrial Disputes (Amendment) Act, No. 22 of 2022 introduced sections 1A, 1B and 1C to section 31DD, requiring the employer to deposit the relevant amount in cash in the Labour Tribunal as security, in the event the High Court set aside the order of the Labour Tribunal on an appeal by the employee and granted reliefs to him. In order to entertain a leave to appeal application by the Supreme Court in such situations, it is necessary to attach the certificate issued under the hand of the President of the Labour Tribunal to that effect. It appears to me that this provision requiring security when an application is filed in the Supreme Court is sometimes overlooked. Sections 1A, 1B and 1C of section 31DD read as follows:

> *1A. Where an employer who is dissatisfied with a final order of a High Court established under Article 154P of the Constitution which is in favour of a workman on an appeal made by such workman against any order of a tribunal, appeals to the Supreme Court against such order, he shall furnish to the President of such tribunal, a security in cash, where the order which is the subject of such appeal directs—*
>
> *(a) only the payment of a sum of money to the workman of an amount equal to such sum;*
>
> *(b) both the payment of a sum of money to the workman and re-instatement of such worker, of an amount equal to such sum and twelve times the monthly salary or wages*

> *of such workman at the time his services were terminated.*
>
> *1B. Every appeal preferred under subsection (1A), shall be supported by a certificate under the hand of the President of the Tribunal to the effect that the security as specified in subsection (1A) has been duly furnished by the employer.*
>
> *1C. The President of every Tribunal shall cause all moneys furnished as security under subsection (1A) to be deposited in an account bearing interests, in any approved bank in Sri Lanka.*

Similar provisions as to depositing money as security were introduced by section 31DDDDD of the Industrial Disputes (Amendment) Act, No. 22 of 2022 when the writ jurisdiction of the Court of Appeal is invoked.

The manner in which the cash deposited in the Labour Tribunal is to be disbursed at the conclusion of the appellate process is comprehensively set out in section 31DDDD.

Is furnishing security within the appealable time mandatory?

The next question is whether the time limit for filing an appeal and the requirement to provide security within that period are mandatory. In my view, both requirements are mandatory. To hold that the former is mandatory but the latter is directory contradicts the clear intention of the legislature.

In *Sri Lanka General Workers Union v. Samaranayake* [1996] 2 Sri LR 268 at 276 Justice Mark Fernando stated that "*the time limit of thirty days for the deposit of security laid down by section 31D is not mandatory*." Having said so, His Lordship further elucidated that "*That does not mean that the time limit can be ignored. Where the objection is taken, the burden is on the Appellant to satisfy the High Court that it should exercise its discretion*

to entertain the appeal, after considering the nature of the default, the circumstances, in which it occurred, and the prejudice to the other party." This means, if the workman, by ignorance or otherwise, does not object, the appeal can be entertained without security. On the other hand, if the workman objects, the High Court would need to conduct another inquiry and make a determination on that issue. With all due respect, I regret my inability to agree with this view.

In *Wimalasiri Perera and Others v. Lakmali Enterprises Diesel and Petrol Motor Engineers and Others* [2003] 1 Sri LR 62 at 63, Justice Mark Fernando, referring to *Samaranayake's* case, stated, "*That does not mean, however, that the deposit of security was not mandatory*." In *Wimalasiri Perera's* case, the employer failed to deposit security at all. Justice Mark Fernando set aside the High Court order, which had determined that the failure to deposit security did not warrant the rejection of the appeal, and restored the Labour Tribunal order. Moreover, the employer was ordered to pay an extra sum equivalent to 25% (in lieu of interest) in addition to the amount awarded by the Labour Tribunal, as well as the costs of the appeal.

The view that the deposit of security is mandatory but the time limit within which it should be deposited is directory defeats the purpose of the amendment. If that interpretation is given, the employer could file the petition of appeal within thirty days from the order, thereby causing all proceedings in the Labour Tribunal to be stayed (in terms of section 31D(9) of the Industrial Disputes Act read with section 333(1) of the Code of Criminal Procedure Act) and permit the appeal pending in the High Court without furnishing security, creating an anomalous situation. This is exactly what has happened in this case.

I must state that such a method could not have been adopted when there was no requirement for furnishing security because, once the petition of

appeal was filed within fourteen days of the order, the appeal could not have been kept pending as was done in this case. It is clear that the appealable time was extended from fourteen days to thirty days to facilitate the employer to furnish security within that period.

Maxwell (op.cit.), page 201 states:

> *Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of legislation established by the Act, which will avoid producing or prolonging artificiality in the law, and which will not produce anomalous results*.

No fixed formula can be laid down for determining whether a provision is mandatory or directory; it depends on a variety of factors, among which the purpose of the Act holds particular significance. As I mentioned earlier, the objective of the amendment mandating cash security was to minimize frivolous appeals and accelerate the resolution of pending appeals.

N.S. Bindra Interpretation of Statutes, 13th edition (2023), page 456 states:

> *There is no fixed rule that will give an exact answer to the question of mandatory and directory provisions. The various special rules deduced from the authorities offer no more than a clue or guide to the character of a statutory provision. As a matter of fact, some of the rules are so weighed with exceptions that it is difficult to fix their value. Each individual case has to be decided on the basis of its facts. A realistic approach to the problem is to utilise the recognised aids to construction with a view to ascertaining the actual legislative intent. One of such sources is the purpose of the statute, that is, the purpose with which the law was made. No statutory provisions are intended by the legislature to be disregarded, but where the consequences of not obeying them in every particular are not*

> *prescribed, the court must judicially determine them. In doing so they must necessarily consider the importance of the literal and punctilious observance of the provision in question to the object the legislature had in view. If it is essential it is mandatory, and a departure from it is fatal to any proceeding to execute the statute or to obtain the benefit of it. The difference between mandatory and directory statutes is one of effect only.*

Maxwell (*op. cit.*) elaborates on this at page 314:

> *It is impossible to lay down any general rule for determining whether a provision is imperative or directory. "No universal rule", said Lord Campbell L.C., "can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be constructed." (Liverpool Borough Bank v. Turner (1860) 2 De G.F. & J. 502, at pp. 507, 508) And Lord Penzance said: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon the review of the case in that aspect decide whether the matter is what is called imperative or only directory." (Howard v. Bodington (1877) 2 P.D. 203, at p. 211)*

When the Industrial Disputes Act in unambiguous terms states that every appeal or application to the High Court "shall be accompanied by a certificate issued under the hand of the President of the labour tribunal" confirming that security has been furnished, the Court cannot and need not embark on a voyage of discovery to interpret the requirement

differently, as there is no ambiguity in the language or intent of the legislature.

Maxwell (op.cit.), page 81 states "*In dealing with matters relating to general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense: loquitur ut vulgus, that is, according to the common understanding and acceptation of the terms*." When the amendment enacts that appeal "shall be accompanied by a certificate issued under the hand of the President of the labour tribunal", what does it mean in the ordinary language? It means the certificate must be filed with the appeal. The Cambridge dictionary defines the word "accompany" as "*to go with someone or to be provided or exist at the same time as something*". The Oxford dictionary defines the term "accompany something" as "*to happen or appear with something else*".

It may also be relevant at this stage to refer to the mischief rule, a well-established principle of statutory interpretation originating from *Heydon's Case* (1584) 3 Co. Rep. 7a. This rule, which promotes purposive interpretation, requires the Court to ascertain what the law was prior to the enactment of the new Act or amendment to the existing Act, what the mischief or defect in the previous law was, and how Parliament intended to address it. The Court must then determine how best to address the mischief and advance the remedy by giving effect to the true intent of the legislature.

In *Heydon's* case it was resolved by the Barons of the Exchequer at p.7b:

> *[T]he sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:- (1st). What was the common law before the making of the Act. (2nd). What was the mischief and defect for which the common law did not provide. (3rd).*

> *what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And, (4th). The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.*

If the mischief (*Heydon*) rule is applied to the facts of the instant appeal, the legislature has identified the shortcomings in the conventional appellate procedure in relation to labour disputes and its prejudicial effect on the workman and provided the remedy by amending the law to rectify it. Then it is the duty of the Court to help suppress the mischief and advance the remedy to achieve the legislative intent.

In *Linea Acqua (Pvt) Ltd v. Lakdeva De Silva* (SC/APPEAL/178/2018, SC Minutes of 13.11.2019), the High Court dismissed the employer's appeal on the ground of failure to deposit security. On appeal to the Supreme Court, Justice Thurairaja (with the agreement of Justice Jayawardena and Justice Dehideniya) affirmed the order of the High Court reaffirming that the employer shall deposit security in cash "at the time of filing the appeal".

Can a bank guarantee be given as security in lieu of cash?

The final question is whether the employer can tender a bank guarantee in lieu of depositing cash as required by section 31D and several other sections of the Act. As I noted earlier, once the money is furnished, the Labour Tribunal is mandated to deposit it in an interest-generating account at an approved bank. The procedures for disbursing the money,

along with the accrued interest, at the final determination of the matter are stated in detail in the Act.

Learned counsel for the appellant citing several authorities decided on the resolution of commercial disputes argues that a bank guarantee is equivalent to cash and therefore the appellant should be allowed to furnish a bank guarantee instead of cash. The Courts have stated that a bank guarantee is equivalent to cash in a different context which is not comparable to the situation at hand. Although the appellant strongly contends that a bank guarantee is equivalent to cash, the very insistence on being allowed to provide a bank guarantee in lieu of cash indicates that there is a distinction between the two forms of security.

Alternative methods of furnishing security do not align with the scheme of the Act. The clear intention of the legislature is to require the employer to furnish security in cash, not in any other form. Section 31D introduced by Industrial Disputes (Amendment) Act No. 32 of 1990 explicitly states that the employer "*shall furnish to such labour tribunal, security in cash*". It does not state that the employer "shall furnish to such labour tribunal, security in cash or by a bank guarantee". The legislature recognizes the difference between the two forms of security and it is not an oversight. For instance, a proviso was introduced to section 756(7) of the Civil Procedure Code (now section 757(5)) by the Debt Recovery (Special Provisions) Act, No. 2 of 1990, which reads as follows:

> *Provided however that in an application for leave to appeal in respect of any order made in the course of any action instituted under the Debt Recovery (Special Provisions) Act, No. 2 of 1990, proceedings in the original court shall not be stayed when leave to appeal is granted unless the Court of Appeal otherwise directs and the Court of appeal shall where it decides to grant leave to appeal call upon the appellant <u>to give security in cash or by a guarantee from a banker</u>*

> *for the satisfaction of the entire claim of that plaintiff or such part thereof as the court deem fit in all the circumstances of the case, in the event of the appeal being dismissed.*

It may be noted that the Debt Recovery (Special Provisions) Act, No. 2 of 1990 was certified on 06.03.1990, and the Industrial Disputes (Amendment) Act, No. 32 of 1990 was certified on 31.08.1990. The legislature was deliberate in its choice of words.

When the wording of a statute is clear, there is no need for interpretation; the words speak for themselves. The Court cannot introduce new words or disregard existing words to give a different interpretation of the statute that the Court may believe serves the ends of justice. The words, phrases, and sentences must be construed according to their ordinary, natural, and grammatical meanings. This principle is known as the literal rule and constitutes the foundational tenet of statutory interpretation. (*Maxwell (op.cit.)*, pages 28-32; *Bindra (op.cit.)*, pages 328-336)

In general terms, the Court may resort to other canons of interpretation, such as the golden rule, the mischief rule, and harmonious construction, if it believes that the literal meaning is inconsistent with the clear intention of the legislature or leads to absurdity or repugnancy. In *Miller v. Salomons* (1853) 7 Ex. 475, Pollock C.B. stated at 560:

> *If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it—to administer it as we find it, and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation.*

In *Lalappa Lingappa & Ors v. Laxmi Vishnu Textile Mills Ltd* (1981 AIR 852) at para 13, the Supreme Court of India held that when interpreting social welfare legislation such as the Industrial Disputes Act, if the provisions are open to two interpretations—one favouring the employer

and the other the employee—the Court should adopt the interpretation that favours the employee.

> *In construing a social welfare legislation, the court should adopt a beneficient rule of construction; if a Section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, as here, we must give effect to it whatever may be the consequences, for, in that case, the words of the statute speak the intention of the legislature. When the language is explicit, its consequences are for the legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficient purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none.*

I hold that the employer ought to have furnished to the Labour Tribunal security in cash, not by means of a bank guarantee or any other form.

If the appeal, application for revision or writ is not accompanied by a certificate issued under the hand of the President of the Labour Tribunal confirming that the appellant or applicant, as the case may be, has furnished the required security as stated in section 31D(8), the High Court shall reject the appeal or application.

By virtue of sections 1A and 1B of section 31DD, and section 31DDDDD of the Industrial Disputes Act, introduced by Act No. 22 of 2022, the attachment of such a certificate obtained from the Labour Tribunal is

mandatory when the employer invokes the jurisdiction of the Supreme Court and the Court of Appeal as well.

Conclusion

The question of law on which leave to appeal was granted is answered in the negative and the appeal is dismissed.

The appellant shall pay Rs. 75,000 as costs of the appeal to each respondent.

The powers of the Supreme Court in hearing appeals are delineated in section 31DD(2) of the Act:

> *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.*

As there is no properly constituted appeal before the High Court until now, the petition of appeal filed before the High Court against the final order of the Labour Tribunal dated 12.03.2020 shall stand dismissed.

Judge of the Supreme Court

Justice P. Padman Surasena
I agree.

Judge of the Supreme Court

Justice K. Kumudini Wickremasinghe
I agree.

Judge of the Supreme Court