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

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sri Lankan Catering Limited,
Airline Centre,
Bandaranaike International Airport,
Katunayake.

PETITIONER

C.A. Case No. WRT/0451/24

Vs.

1. Minister of Labour and Labour Relations,
   Ministry of Labour,
   Labour Secretariat, Colombo 05.

2. Commissioner General of Labour,
   Labour Secretariat,
   3rd Floor, Narahenpita, Colombo 05.

3. Mr. A.B. Herath,
   Hon. Arbitrator,
   34/64, 1st Lane,
   Higgolla Road, Matale.

4. Mr. W.K. Athauda Arachchi,
   No. 159/4,
   Borukgamuwa, Pallewela.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Amaranath Fernando with Nikitha Senaratne and Thisura Samarasooriya instructed by Nathasha Samarasinghe for the Petitioner.

Medhaka Fernando, SC for the 1st and 2nd Respondents.

ARGUED ON : 31.07.2025

DECIDED ON: 28.08.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

1. This application for a writ of *certiorari* is sought to quash an arbitral award (P-7) made under the Industrial Disputes Act. The Minister of Labour has referred this dispute for arbitration acting under Section 4(1) of the Industrial Disputes Act ("the IDA"). The said award has then been published in the Gazette Extraordinary bearing No. 2356/35, dated 03.11.2023 (P-7). The arbitration was between the petitioner, Sri Lankan Catering Ltd., and the 4th respondent.

2. Prior to consideration of the legal issues, it is prudent to narrate in brief the facts that led to this dispute. The 4th respondent was employed by the petitioner as a Staff Facilities Attendant, in 15.10.1990 and after serving for a period of 30 years, retired on 28.12.2020 as a supervisor. A bonus payment was made by the petitioner in April 2021. The 4th respondent made a complaint to the Labour Commissioner alleging the non-payment of the said bonus, which he claims was due to him. It is this dispute that has been so referred for arbitration. The arbitrator held that the 4th respondent is entitled to the bonus payment based on the collective agreement and awarded a month's salary being a sum of Rs. 143,908.00. The ground on which the petitioner is assailing the said award is that the arbitrator erred in holding that the 4th respondent was

entitled to receive bonus based on clause 11.1 of the collective agreement (P-2).

3. It is common ground that there is a collective agreement between the petitioner and the employees (P-2). Clause 11 thereof provides for what is referred to as the profit bonus. Paragraph 11 reads as follows:

> *11.1. The Board of Directors will decide annually on the payment of bonus, if any, to the employees, which will be solely dependent on the profits made by the company during the previous financial year. The decision on the quantum of the bonus for the year under reference is the sole discretion of the Board of Directors.*
> *In case there is a disagreement with regard to the quantum of bonus declared by the Board of Directors, initially all attempts should be made to come to a settlement through negotiations and discussions with the Management within a period of 7 (seven) days. If either party is not in agreement for settlement, the Management will refer the matter to the EFC and the decision arrived at EFC with the Management and the Parent Union will be the final.*
>
> *(a) Employees in the service of the Company during the entirety of the previous Financial year for which the bonus is paid will be entitled for the full bonus declared.*
> *(b) Employees in the service of the Company for less than the full period of the Financial year for which the bonus is paid, will be on a pro-rata basis provided that he/she is being confirmed within the period of the financial year.*
> *(c) Payment of Bonus will be made on or before 15th December of each year.*
>
> *11.2. The Company may withhold the payment of the entirety or part of the bonus to employees where attendance, punctuality, conduct or attitude is not satisfactory.*
> *11.3. The employees who have been or unauthorized absence during the period under review for the payment of bonus, twice the number of days no-pay will be deducted from his/ her entitlement of bonus.*
> *11.4. The bonus will be paid for those employees as set out in 11.1 (a) & (b), who are actively in service at the time of the payment of bonus.*

4. According to the arbitration award, the arbitrator has found that the applicant, W. K. Athawudaarachchi, the 4th respondent was employed by the petitioner from 15.10.1990 to 15.10.2020 and has retired after 30 years of service on 28.12.2020. The arbitrator has referred to clause 11 of the collective agreement and then concluded that the 4th respondent is entitled to the said bonus payment as he was in active service as at 15.12.2020 which is the date on which the bonus is due as per clause 11.1 (c). The arbitrator also finds that the bonus was not paid on 15.12.2020 but in April 2021 but was for the financial year 2019/2020. He then refers to the MOU and observes that the said MOU was signed on 07.04.2021. It was then concluded that the bonus due on 15.12.2020 was in fact made on 07.04.2021. Accordingly, the arbitrator held that this bonus was in fact earned by the 4th respondent and accordingly made the award. The conclusion of the arbitrator is that the bonus payment was in fact the payment agreed to by clause 11 of the collective agreement and the MOU was a subsequent understanding to make the payment.

5. According to the learned Counsel for the petitioner, the payment of bonus for the financial year 2019/2020 was not the regular profit bonus under clause 11 of the collective agreement. Since there was no profit in the year 2019/2020 the bonus was not declared and no payment was made. However, the employees attached to the union of the Sri Lanka Nidahas Sevaka Sangamaya has made representations and in view of which though there was no profit the petitioner company has agreed to make a bonus payment and entered into a Memorandum of Understanding (R-1). The specific conditions applicable and the persons entitled were clearly provided in the MOU. Paragraph 2 defined the "Eligible Employee" as follows:

> *"Parties agree that the "Eligible Employees" means permanent employees that have been in the employment in grades 1 to 7 of the Employer, confirmed on or before 1st April 2019 and in active*

service of the Employer on the date of paying the bonus payment referred to in paragraph (1) above. For the purpose of clarity, regardless of the active employment in the Employer during the period from 1st April 2019 to 31st March 2020, the employees under suspension as at the bonus payment date, and ex-employees who had retired or resigned prior to the date of the payment of the bonus shall not be eligible for the bonus payment referred to in paragraph (1) above."

6. The eligible employees for this bonus are those in active service of the employer on the date of paying the bonus. It provides further that ex-employees who had retired prior to the date of payment of the bonus are not eligible. The bonus payment agreed to by this memorandum of understanding is not the profit bonus referred to in clause 11 of the collective agreement. Profit bonus as evident from clause 11.1 is solely dependent on the profit made by the company during the previous financial year. It is common ground that the company did not make profit during the period 2019/2020. Thus, the payment of bonus under clause 11 was not made. However, members of a certain union have successfully negotiated to be paid bonus of one month's salary with an upper cap of Rs. 150,000/-. This is therefore an ad hoc, payment not withstanding there being no profit that which has been agreed to, but subject to the conditions specified therein. The eligible employees are specifically stated and defined there in (at paragraph 2). The operative date of payment is 8th April 2021. The primary determinate criteria is that the employee being in active service on the date of paying the bonus and excludes all employees who have retired prior to the date of payment. This is confirmed by paragraph (c) of R-3, the inter office communication.

7. According to R-3/P-8, it does refer to a payment of a bonus for the year 2019/2020. The said reference is no more than a narration of the commencement of this negotiation. The petitioner and a union have embarked upon a negotiation in respect of the non-payment of the bonus

for 2019/2020. This entitlement under clause 11 of the collective agreement is based on profit. In the absence of the profit as admitted by both parties, a negotiation has resulted in making the payment of a negotiated sum which is not the profit bonus. It is in this context that a reference is made to 2019/2020. Upon the said negotiation, the decision was to make the said payment of bonus on 08th April, 2021. Then, R-3 has specifically provided for the basis of the payment by sub-paragraph (a) to (i) of the said inter-office communication. Paragraph (a) provides that the entitlement is for those who are in active service as at 08th April, 2021. This is, once again, confirmed by paragraph (b), (d), and (e). Paragraph (c) specifically provides that, "*employees who have retired/resigned/under suspension/left from the services of the company as at 08 April 2021* are *not entitled to the payment of bonus."* Thus it is abundantly clear that those who are entitled are only such employees specified therein who were in active employment as at 08th April, 2021. This is also referable to the MOU (R-1/P-4), which also provides that the employer has agreed to pay a month's salary as bonus for eligible employees of the employer on or about 08th April 2021. Thus the date of payment is 08th April, 2021. Then paragraph 2 of the said MOU has defined who an "Eligible Employee" which clearly provides that notwithstanding the fact of such employee being in active employment between 01.04.2019 to 31.03.2020, he or she shall not be eligible to receive this bonus payment, if such employee has retired prior to the date of payment.

8. It is relevant to note that there are three separate documents that are relevant and brought to the notice of the arbitrator.

    i. The collective agreement (R-4)
    ii. The MOU dated 07.04.2021 (R-1)
    iii. The inter office communication dated 06.04.2021

Accordingly, the sum total of the MOU, read with the inter-office communication (R-1 and R-3) is that, to receive the said bonus payment, it is mandatory that such employee be in active service as at 08.04.2021.

The petitioner clearly does not satisfy this eligibility requirement. The petitioner retired on 18.12.2019. The arbitrator in coming to his decision failed to appreciate and consider this singular most important fact. Accordingly, the arbitrator has failed to consider a very relevant fact in making his determination.

9. That being so, the learned State Counsel appearing for the respondents submitted that the bonus that was declared under the MOU was the bonus due under clause 11 of the collective agreement and the due date specified therein is 15.12.2020 and in accordance with clause 11 of P-2, the 4th respondent is entitled and the arbitrator was correct in so determining. I have hereinabove considered this aspect. Clearly the bonus paid under the MOU is not, in form and in substance, the profit based bonus contemplated by clause 11. If I may elaborate, in the absence of a profit, there cannot be a determination of a bonus based on profit. Thus, this is an *ex gratia* payment negotiated by a certain union being a month's salary with an upper cap of Rs. 150,000 that has been paid as bonus on or about 08.04.2021. It is not something that was earned by the employees, so to say. It is only if there is a profit an employee may be entitled to a bonus based on clause 11 of P-2. It is thus a different and distinct payment received and obtained by the employees based on an independent negotiation that culminated in the MOU.

10. Certainly it is not the profit-based bonus under clause 11, but a payment which those employees who were in active employment negotiated and received more in the form of an *ex gratia* payment on the benevolence of the employer. This stands to reason and logic. Employees who were not in active service may claim and be entitled to a bonus referrable and declared on the basis of profit of a previous year where such employee was a part of the labour force who worked towards making the said profit. However, if there is no profit, past employees can have no such claim. The bonus paid, on the basis of the MOU and the

inter-office communication (R-3), is not referable to past profit, which deprives and disentitles any right of a past employee to claim such an *ex gratia* bonus.

11. However, the arbitrator has concluded that the bonus payment made on 07.04.2021 was earned by the 4th respondent and is lawfully due to him and is entitled to the same. The finding reads as follows;

> "2020 දෙසැම්බර් මස 15 වන දිනට ගෙවිය යුතු මුදල, ගෙවීම 2021 අප්‍රේල් මස 07 වන දින සිදු වී ඇත. එබැවින් අදාළ මුදල ඉල්ලුම්කරුට නීත්‍යානුකූලව ලැබිය යුතු සහ ඔහු විසින් උපයා ගත් ප්‍රසාද දීමනාවක් බවට නිගමනය කරමි."

12. In the above circumstance, the arbitrator has clearly failed to appreciate and take into consideration the difference and the distinction between the bonus paid under the MOU and that bonus contemplated under clause 11 of the collective agreement. This is a clear failure to take in the consideration a relevant fact. Accordingly, the award so made by the arbitrator is unreasonable, *ultra vires*, and illegal to that extent. In these circumstances, I would refer to the following passage from Administrative law by Wade and Forsyth (11th Ed., at pg. 323, "*Relevant and Irrelevant Considerations*"):

> *"There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its action is ultra vires and void. It is impossible to separate these cleanly from other cases of unreasonableness and abuse of power, since the court may use a variety of interchangeable explanations, as was pointed out by Lord Greene. Regarded collectively, these cases show the great importance of strictly correct motives and purposes. They show also how fallacious it is to suppose that powers conferred in unrestricted language confer unrestricted power."*

Further, A.H.M.D. Nawaz, J., in ***Tennakoon Mudiyanselage Janaka Bandara Tennakoon vs. Hon. Attorney General and Others*** CA/WRT/335/2016, decided on 15th November 2020, held as follows:

> *"In administrative justice, failure to take into account relevant considerations and taking into account irrelevant considerations would taint and nullify the decision as illegality which is an aspect of Wednesbury unreasonableness. Our attention has not been drawn to any analysis or consideration of these matters before a decision was made to indict the Petitioner."*

13. The arbitrator has erred in interpreting and comprehending as to who an "Eligible Employee" is. On this erroneous finding the arbitrator has determined that the 4th respondent is an "Eligible Employee" within the meaning of Paragraph 2 of the MOU (R-1). This may appear to be an error of fact. However, the erroneous determination as to who an Eligible Employee is, has resulted in the arbitrator proceeding to determine that the 4th respondent is eligible and made the award accordingly. In the normal course, an error of law will be readily be reviewed by courts. However, courts will be slow and reluctant to review an error of fact. That being so, if the error of fact is of such a fundamental nature that it can cause the decision to be unlawful. In Constitutional and Administrative Law (9th Edition) by Hilaire Barnett at Page 582 considering the errors of fact opined thus, " *The question to be asked, therefore, is whether the mistake of fact is one which is central to the decision maker's power of decision. Only such crucial errors of fact will be reviewed by the court. In addition, if a decision is reached on the basis of facts for which there is no evidence, or based on essential facts which have been proven wrong, or been misunderstood or ignored, the court will quash the decision.*"

14. The arbitrator has upon considering the MOU and the collective agreement considered the meaning of "Eligible Employee". The arbitrator had made a positive finding that 4th respondent is lawfully entitled to the bonus paid on 07.04.2021 as he had earned the same. In coming to this conclusion, the arbitrator has completely overlooked and failed to appreciate that the bonus as agreed by the MOU and paid is not based on profit. It is for all purposes and *ex gratia* payment made by the

petitioner under the MOU. The arbitrator has thus completely misconceived and erred when he decided so. This to my mind is a fundamental error that has caused the decision to be unlawful to that extent. It all boils down to the failure to appreciate and comprehend the term "Eligible Employee" and the construction of the MOU along with the collective agreement. Unless, such employee was an "Eligible Employee" who was in active employment as at the date of the payment of the bonus (April 2021), the arbitrator could not have lawfully awarded the bonus payment as done by P-7. Accordingly, the said decision is unreasonable and illegal which is an aspect of the Wednesbury unreasonableness.

15. Thus, the impugned decision cannot be allowed to stand and accordingly, the writ of *certiorari* as prayed for by prayer (d) is issued to quash the impugned award P-7 of the arbitrator. Accordingly, the award made by the 3rd respondent contained in the government gazette (extraordinary) bearing No. 2356/35 dated 03.11.2023 marked P-7 is hereby quashed.

16. Application is allowed. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL