

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

In the matter of an application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA CPA 141/2022

HC Case No: LTA/05/2020

LT Case No: 06R/7407/2015

Ceylon Estates Staffs' Union
(Lanka Wathu Sewa Sangamaya),
No. 6, Aloe Avenue,
Colombo 3.
(On behalf of T.K. Nihal)

Applicant

Vs.

01. The Superintendent,
St. Joachim Estate,
Ratnapura.
02. Tea Research Board,
St. Coombs,
Talawakale.

Respondents

AND BETWEEN

Ceylon Estates Staffs' Union
(Lanka Wathu Sewa Sangamaya),
No. 6, Aloe Avenue,
Colombo 3.
(On behalf of T.K. Nihal)

Applicant-Appellant

Vs.

01. The Superintendent,
St. Joachim Estate,
Ratnapura.
02. Tea Research Board,
St. Coombs,
Talawakale.

Respondent- Respondents

AND NOW BETWEEN

01. The Superintendent,
St. Joachim Estate,
Ratnapura.
02. Tea Research Board,
St. Coombs,
Talawakale.

Respondent – Respondent – Petitioners

Vs.

Ceylon Estates Staffs' Union
(Lanka Wathu Sewa Sangamaya),
No. 6, Aloe Avenue,
Colombo 3.
(On behalf of T.K. Nihal)

Applicant-Appellant- Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Shantha Jayawardena with Hirannya Damunupola, Azra Basheer, Wihangi Tissera and Tharuka Ranathunga for the Respondent- Respondent- Petitioners.
S.H.A. Mohammed instructed by Sanjeewa Kaluarachchi for the Applicant- Appellant- Respondent.

Written submissions tendered on: 08.12.2023 & 14.01.2026 by Respondent – Respondent- Petitioners.
22.04.2024 & 08.12.2025 by Applicant- Appellant – Respondent.

Judgment Delivered: 25.02.2026

Thotawatte, J.

Introduction

This application is a revision application instituted by the Respondent–Respondent–Petitioners, namely the Superintendent, St. Joachim Estate, Ratnapura and the Tea Research Board, Talawakale (hereinafter sometimes collectively referred to as the “**Petitioners**”), invoking the revisionary jurisdiction of this Court under Article 138 of the Constitution.

The application seeks to challenge the final judgment of the Provincial High Court of Sabaragamuwa holden in Ratnapura, which allowed the appeal preferred by the Applicant-Appellant-Respondent, (hereinafter sometimes referred to as the “**Respondent**”), Ceylon Estates Staffs’ Union (Lanka Wathu Sewa Sangamaya) acting on behalf of workman T. K. Nihal and had set aside the Order of the Labour Tribunal, thereby granting relief in favour of the workman.

Factual and Procedural Background

The Respondent, acting on behalf of the workman, T. K. Nihal, instituted proceedings before the Labour Tribunal, Ratnapura, alleging that the decision of the employer to retire the workman at the age of fifty-five years and eight months, instead of permitting him to continue in service until the age of sixty years, amounted to an unjustified termination of employment within the meaning of the Industrial Disputes Act. The essence of the workman’s grievance was that similarly placed employees had been permitted to serve until sixty years of age and that the employer was bound, either by established practice or by applicable administrative directions, to extend the same benefit to him.

The Petitioners resisted the application, contending that the retirement of the workman was done strictly in accordance with the express terms and conditions governing his employment, and that no legal right vested in the workman to remain in service beyond the stipulated retirement age. It was further maintained that any administrative circulars or internal guidelines relied upon by the workman did not have the force of law so as to override the contractual and statutory framework applicable to the employment.

By Order dated 21.07.2020, the Labour Tribunal dismissed the application, accepting the position of the employer that the retirement was lawful and did not constitute an unjustified termination.

Aggrieved by that Order, the Respondent preferred an appeal to the Provincial High Court under Section 31D of the Industrial Disputes Act. By judgment dated 21.07.2022, the Provincial High Court allowed the appeal, set aside the Order of the Labour Tribunal, and held that the premature retirement of the workman did not constitute a lawful termination and was accordingly unjustified. The Provincial High Court accordingly granted relief in favour of the workman, including an order for payment of back wages up to the age of sixty years.

The Superintendent, St. Joachim Estate, and the Tea Research Board did not invoke the statutory mechanism provided under section 31DD of the Industrial Disputes Act within the time prescribed by law to challenge the said judgment. Instead, they have instituted the present application in revision before this Court under Article 138 of the Constitution, seeking to set aside the judgment of the Provincial High Court.

Preliminary objection

A preliminary objection has been raised by the Respondent challenging the maintainability of the present application. As this objection goes to the root of the jurisdiction of this Court, it becomes necessary, as a threshold matter, to determine whether this Court is vested with jurisdiction to entertain the present revision application filed by the employer against a final appellate judgment of the Provincial High Court rendered in an appeal arising from proceedings instituted under the Industrial Disputes Act.

Issues for Determination

The principal issues that arise for determination are:

1. Whether a revision application under Article 138 of the Constitution is maintainable at the instance of the Respondent–Respondent–Petitioners against a final judgment of a Provincial High Court delivered in the exercise of its appellate jurisdiction under Section 31D of the Industrial Disputes Act.

2. Whether the Respondent–Respondent–Petitioners, having failed to invoke the statutory remedy provided by Section 31DD of the Industrial Disputes Act, are entitled to seek redress by way of revision before this Court.

Jurisdiction and Scope of Revisionary Power

The impugned judgment is one delivered by the Provincial High Court in the exercise of its appellate jurisdiction under Section 31D of the Industrial Disputes Act No.43 of 1950, upon an appeal from an order of the Labour Tribunal. The statutory scheme governing industrial disputes delineates an exhaustive and self-contained appellate hierarchy. Section 31D constitutes the sole appellate route from the Labour Tribunal to the Provincial High Court, while Section 31DD thereafter expressly provides a further and limited right of appeal from a judgment of the Provincial High Court directly to the Supreme Court, subject to the grant of leave.

Section 31DD (1) of the Industrial Disputes Act, No. 43 of 1950, reads as follows:

- 31 DD (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 and obtained.

The Act does not contemplate, either expressly or by necessary implication, any appeal or revision to the Court of Appeal from such a judgment. This legislative design manifests a clear intention to confer statutory finality on judgments of the Provincial High Court under section 31D, save to the extent expressly preserved by section 31DD.

In the above context, the appellate and revisionary jurisdiction of this Court under Article 138 of the Constitution is not entrenched, but subject to a clear statutory condition. Article 138 itself stipulates that such jurisdiction is to be exercised “subject to the provisions of the Constitution or of any law,” thereby rendering it an enabling provision, exercisable only within the limits laid down by statute. Consequently, Parliament is constitutionally

empowered, through ordinary legislation, to govern the exercise of that jurisdiction, including the conditions under which it may be invoked and the extent to which it is available, subject to the Constitution. Article 138 cannot be invoked to defeat or bypass a statutory appellate scheme lawfully enacted by Parliament.

As clarified in *J. Chathuranga Dharmakeerthi and another v. Lucky Homes (Pvt) Ltd.*¹, once Parliament has, by enacting Section 31DD of the Industrial Disputes Act read with Section 9(a) and its proviso to Act No. 19 of 1990, channelled appellate and interlocutory review of Provincial High Court decisions in labour matters exclusively to the Supreme Court, the legislative intention is unmistakable. In such circumstances, Article 138 cannot be invoked to assert a residual or parallel revisional jurisdiction in the Court of Appeal.

The absence of express words excluding revision is immaterial, for where the Constitution itself makes the jurisdiction of this Court subject to “any law,” legislative intent to exclude intermediate review is sufficient and effective without formal words of ouster. To permit the invocation of Article 138 as a parallel avenue of revision would undermine the statutory finality intended by Section 31DD, would frustrate the legislative objective of arresting delays in the resolution of industrial disputes, and would convert concurrent jurisdiction into an impermissible additional tier of appellate review.

Accordingly, this Court concludes that where a Provincial High Court has exercised appellate jurisdiction under Section 31D of the Industrial Disputes Act, its judgment or order is not amenable to appeal or revision before the Court of Appeal. The only avenue of challenge provided by law is that stipulated in Section 31DD, namely, recourse to the Supreme Court.

Conclusion

For the foregoing reasons, this Court holds that the Industrial Disputes Act constitutes a complete statutory scheme for the determination and review of industrial disputes, under which Section 31D vests appellate jurisdiction in the Provincial High Court and Section 31DD provides the exclusive remedy for challenging its judgments. As that statutory remedy was not invoked within the time prescribed by law, the judgment of the Provincial High Court has attained finality, and the present revision application instituted in an attempt to invoke Article 138 as a substitute remedy, is not maintainable.

¹ CA CPA 0098/2022 CAM 23.01.2026.

Accordingly, the preliminary objection having been upheld, the revision application filed by the Petitioners is dismissed, subject to costs fixed at Rs. 30,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal