

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

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

Case No. CA (Writ) 253/2024

INDO-EAST ENGINEERING AND
CONSTRUCTION (LANKA) (PRIVATE)
LIMITED,
No.133A, Attampolawatta Road,
Hendala,
Wattala.

PETITIONER

Vs.

1. H.K.K.A. JAYASUNDERA,
Commissioner General of Labour,
Department of Labour,
11th Floor,
“Mehewara Piyesa” Building,
Colombo 05.

2. N.K.J. GUNERATHNE,
Assistant Commissioner of Labour,
Department of Labour,
Termination of Employment Branch,
11th Floor,
“Mehewara Piyesa” Building,
Colombo 05.

3. R.M. WIJESINGHE,
Galkadapathana,
Oththakade,
Bandarawela,

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Kushan D' Alwis, P.C. with Ayendra Wickramasekara for the Petitioner instructed by Palitha Perera.

Ashara Senewirathne, S.C. for the 1st and 2nd for the 1st and 2nd Respondents.

Written Submissions: By the Petitioner filed on 20/04/2026.

By the 1st and 2nd Respondents filed on 12/05/2026.

Argued On : 25/02/2026.

Judgement On : 22/05/2026.

Dr. Sumudu Premachandra J.

1] The Petitioner, a company involved in heavy engineering and power generation, seeks to challenge orders issued by the Commissioner General of Labour (1st Respondent) and the Assistant Commissioner of Labour (2nd Respondent). The dispute centers on the termination of R.M. Wijesinghe (3rd Respondent), a former security guard who had been employed by the company for over 25 years.

2] The conflict originated from complaints lodged on 07/12/2022, regarding the termination of the 3rd Respondent and two other employees, K.M. Jayasekera and S. Wimalasiri. The Petitioner contends that the 3rd Respondent's services were terminated with his written consent on 10/09/2022, following the completion of specific projects. Furthermore, the company asserts that the 3rd Respondent accepted his gratuity of Rs. 282,333.33 and the Employees Trust Fund payments, and signed a letter stating that he had no further claims against the Petitioner.

3] Despite the Petitioner's claims of a consensual termination and a subsequent offer during the inquiry to reinstate the 3rd Respondent with back wages, a final order was issued on 05/02/2024. This order, identified as "P12," directed the Petitioner to pay compensation of Rs. 848,250/- to the 3rd Respondent. The Petitioner highlights a significant discrepancy, noting that the 2nd Respondent's initial recommendation ("P11") suggested only Rs. 195,000/-, making the final mandated sum nearly four times the original recommendation.

4] The Petitioner argues that these orders are 'Ultra Vires' (beyond legal authority) and a breach of natural justice, as the 1st Respondent did not preside over the actual inquiry. Seeking a Writ of Certiorari to quash the decision, the company has deposited the full compensation amount of Rs. 848,250/- as security to obtain a certificate from the 1st Respondent.

5] In the above circumstances, the Petitioner prays that this Court be pleased to;

- a) Issue Notice in the first instance on the 1st to 3rd Respondents above named;
- b) Issue a mandate in the nature of Writ of Certiorari, quashing the said Order of the 1st Respondent above named, contained in the document marked P12;
- c) Issue a mandate in the nature of a Writ of Certiorari, quashing the said Recommendation of the 2nd Respondent above named, contained in the document marked P11;
- d) Grant an Interim Order staying and/or restraining the 1st and/or 2nd and/or 3rd Respondents from initiating proceedings in the Magistrates Court to enforce the said Order of the 1st Respondent contained in the document marked P12, against the Petitioner, pending the hearing and determination of the above styled application;

Or

In the event proceedings have already been instituted in the Magistrates Court by any one or more of the 1st and/or 2nd and/or 3rd Respondents contained in the document marked P12, issue an Interim Order staying and/or restraining the 1st and/or 2nd and/or 3rd Respondents from prosecuting such proceedings pending the hearing and determination of the above styled application;

e) Grant costs;

f) Grant such other and further relief as to Your Lordships' Court shall seem meet.

6] The Respondents in their objections take that the case centers on the allegedly unlawful termination of a security officer, referred to as the 3rd Respondent, argue that the termination violated the provisions of the Termination of Employment of Workman Act (TEWA) because it lacked the necessary prior written consent from either the workman or the Commissioner. They contend that a document relied upon by the Petitioner as "prior consent" was actually signed after the termination date and was not fully understood by the employee, who is not proficient in English. They further say that an initial inquiry led to a recommendation for compensation totaling Rs 848,250 due to the TEWA violations. Thus, the compensation amount is justifiable.

7] The Respondents also highlight several procedural failures by the Petitioner, including the misrepresentation of facts and filing the application out of time.

8] However, it is an admitted fact that the 3rd Respondent's service was terminated on September 10, 2022. The core of the dispute centers on whether the petitioner complied with the Termination of Employment of Workman Act (TEWA), which requires prior written consent from the workman or approval from the Commissioner. The Labour Department asserts that a letter dated

September 12, 2022, did not constitute valid "prior consent" because it was signed after the termination notice and was written in English, a language the 3rd Respondent, a security officer, likely did not fully understand.

9] It is seen that the recommendation for a compensation payment of Rs. 848,250 was imposed due to the unlawful nature of the termination, based on the findings of the inquiry. We do not think it is irrational or unreasonable as the discretion is vested with the Commissioner General. **Serendib Coconut Products Ltd. (In Voluntary Liquidation) and others v Commissioner General of Labour and others** [2004] 2 S.L. R. 137; His Lordship Justice Sripavan highlighted the importance of the above protection of Employee as follows;

"The Termination of Employment of Workmen, (Special Provisions) Act is a special legislation which makes special provision in respect of the termination of the services of workmen in certain employments by their employers. By closure the workmen are suddenly thrown out of employment for no fault of theirs and have to face hardships; that is why the legislature gives a discretion to the Commissioner to make an order for compensation."

10] The Petitioner stressed that the termination of employment for certain workmen was conducted legally and with consent. The Petitioner's argument is based on the fact that the termination of a third party's employment was consensual and complied with the Termination of Employment of Workmen Act No. 45 of 1971.

11] It is to be noted that the Petitioner maintains that the 3rd Respondent consented to this termination in writing, stating he had no further claims and subsequently accepted all statutory dues, including Gratuity and ETF payments. Despite this, the 3rd Respondent filed a complaint with the Department of Labour alleging termination without consent, in violation of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971. Following an inquiry, the Assistant Commissioner (2nd Respondent)

recommended compensation of Rs. 195,000/-, which the Commissioner General (1st Respondent) later escalated to Rs. 848,250/-. As noted in paragraph 9 in this judgement , it is within the ambit of law.

12] The main issue here is that the termination was done with the consent of the employee under Section 2 of TEWA or not. Section 2 says;

*“2. (1) No employer shall terminate the scheduled employment of any workman without –
(a) the prior consent in writing of the workman; or
(b) the prior written approval of the Commissioner”*

13] The Petitioner contends that the termination was lawful because the 3rd Respondent provided prior consent, citing a document marked P5(b) (also referred to as R2) dated 12/09/2022. However, the Respondents argue this document was merely an acknowledgement of termination and a receipt for a service payment of Rs. 282,333.33, rather than the "prior written consent" required by law. They emphasize that the 3rd Respondent, as a security officer, likely did not fully understand the English document he signed and has consistently maintained in affidavits (such as P9) that he never consented to the termination of his services.

14] The said letter, P5(b) (R2), was a concise letter and is reproduced below for clarity.

“12th September 2022

I, R.D. Wijesinghe (NIC 682422165V) , have received all payments due to me inclusive of salaries, Employees Provident Fund & Employees Trust Fund for the service rendered as a Security Guard to my employer, Indo East Engineering & Construction (Lanka) (Private) Ltd.

I also confirm that, I have no further claims whatsoever against my employer.

(SGD)

R.D. Wijesinghe

(682422165V)

12/09/2022”

15] It is to be noted, in this letter, there is no consent mentioned for the termination of employment, instead it implies that service was terminated and all due payments were paid.

16] The consequences are mentioned in sections 6 and 6A of TEWA. Sections say;

“6. Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, the Commissioner may order such employer to continue to employ the workman, with effect from a date specified in such order, in the same capacity in which the workman was employed prior to such termination, and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated; and it shall be the duty of the employer to comply with such order. The Commissioner shall cause notice of such order to be served on both such employer and the workman.

6A. (1) Where the scheduled employment of any workman is terminated in contravention of the provisions of this Act in consequence of the closure by his employer of any trade, industry or business, the Commissioner may order such employer to pay to such workman on or before a specified date any sum of money as compensation as an alternative to the reinstatement of such workman and any gratuity or any other benefit payable to such workman by such employer.”

17] It is clear that there is no letter of consent has been taken from the Commissioner. The Remaining question is whether accepting all dues can be treated as a valid consent of the employee/worker for termination, as depicted in R2.

18] In **Emboddy Trading (Pvt) Ltd v. Commissioner General of Labour and Others (CA/WRIT/227/2022)**, decided on December 11, 2024, Justice Sobhitha Rajakaruna explicitly ruled that an employee cannot give valid statutory consent to future termination within an initial appointment letter. His Lordship affirmed that boilerplate clauses signed at the start of employment do not satisfy the strict legal definitions of consent under the Termination of Employment of Workmen Act (TEWA). What is gathered from this judgment is that there must be specific consent and it must be prior consent to qualify the under section 2 TEWA. In this matter, this court cannot accept R2 as a prior written consent.

19] The relief under sections 6 and 6A is clear if an employer terminates employment (whether explicitly or by constructively forcing an employee out) in violation of Section 2, the termination is rendered null and void. Under Sections 6 and 6A, the employee can apply to the Commissioner of Labour for relief.

20] This court is of the firm view that accepting all due payments, cannot be treated as a valid consent for termination under the Termination of Employment of Workmen Act (TEWA). As a worker, a weaker party, we are of the view that simply receiving final dues, such as EPF, ETF, accrued salary, or standard gratuity, does not mean an employee has legally consented to an illegal or forced termination. There cannot be tacit consent letters under section 2 of TEWA.

21] The next question is to see whether reinstatement should be granted or awarding compensation is illegal. In **Eksath Kamkaru Samithiya v. Commissioner of Labour** [(2001) 2 Sri LR 137] this court clarified the powers of the Commissioner of Labour under the Termination of Employment of Workmen Act (TEWA) No. 45 of 1971. The court ruled that upon finding a termination illegal, the Commissioner is mandatorily required to order

reinstatement, rather than having discretion to award compensation in lieu of employment. His Lordship U. De. Z. GUNAWARDANE, J., had this to say;

“There is at least one other factor contributing or helping to construe the term “may” in section 6 of the Act in an obligatory or imperative sense i.e. the incapability of using section 6 of the Act to make an award of compensation as the 1st respondent (Commissioner of Labour) had erroneously done. The Commissioner is not at all authorized or empowered to make an order for compensation under section 6 of the Act which reads thus: Commissioner may order such employer to continue to employ the workman with effect from a date specified in such order ...?..... and to pay the workman his wages and all other benefits which the workman would have otherwise received if his services had not been so terminated ” It is worth observing that section 6 (excerpt of which is reproduced above) speaks of “wages and other benefits”. That expression “wages and other benefits” cannot be construed as embracing compensation.”

22] Thus, it is clear that if not the termination is granted for redundancy, compensation cannot be awarded. I now consider the “notice of Termination” dated 05/08/2022. It shows;

“Our Ref: IE/LT/22/022

Date : 05th August 2022

Mr. K.M. Jayasekera-Security Guard

Notice of Termination of Employment.

This is to inform you that the various projects undertaken by the Company has already been completed.

Therefore, it is regret to notify you that your service of employment will be terminated with effect from 10th of September 2022.

However, if we have New Projects we will contact you.

Thank you for the valuable service provided to Indo East during your stay in the Company.

(SGD)

Manager Administration-

Indo-East Engineering & Construction (Lanka) (Private) Ltd”

23] The above termination letter clearly shows that due to redundancy as most of the projects were completed the employee was terminated and they further give legitimate expectation to the employee that if new projects are to be commenced, they will contact you. By giving false undertaking Rs, consent letter was taken. On the other hand above termination letter and P5 “එකී නිවේදනය අනුව පවතී ව්‍යාපෘතීන් ගණනාවක් අවසන් වී ඇති බැවින් ” written submission clearly show that termination was done under redundancy. If so under section 6A, if reinstatement is not possible the Commissioner may order such employer to pay to such workman on or before a specified date any sum of money as compensation as an alternative to the reinstatement. Thus, the order of the Commissioner is well within the purview of section 6A of the TEWA.

24] As noted on the strict requirements of Section 2 of TEWA, which mandates that consent must be obtained prior to termination explicitly and unambiguous manner in written form. As R2, P5(b) does not qualify for the above requirements cannot be treated as valid legal consent. Thus, under Sections 6A of the TEWA, the Commissioner has the power to award compensation in cases where termination results from the closure of a business or project.

25] In the case in hand, we do not see any illegality, irrationality, or procedural impropriety as Lord Diplock held in **Council of Civil Service Unions v Minister for the Civil Service** [1985] AC 374 for grounds to exercise our discretionary power.

26] Thus, this application is dismissed with costs of Rs. 50,000 to be payable by the Petitioner to the 3rd Respondent-employee, additionally, to the compensation award by the Commissioner General (1st Respondent) to a sum of Rs. 848,250/-

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JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL