

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

In the matter of an application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for the issue of prerogative writs in the nature of certiorari and mandamus.

**CA (Writ) Application No :  
193/23**

S.D.N. Jayalath  
No. 92, Keels Housing,  
Pinwattha,  
Panadura.

**PETITIONER**

Vs.

1. Minister of Labour and Foreign Employment,  
7<sup>th</sup> Floor, Mehewara Piyasa,  
Narahenpita,  
Colombo 5.
2. B.K. Prabhath Chandrakeerthi,  
Commissioner General of Labour,  
Labour Secretariat,  
Colombo 5.
3. Janajith de Silva,  
No. 9, Court Road,  
Gampaha.

4. National Housing Development  
Authority,  
No. 1826,  
Chittampalam A Gardiner Mawatha,  
Colombo 2.

**RESPONDENTS**

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**  
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Srinath Perera for the Petitioner.  
  
Zuhri Zain, DSG for the 1<sup>st</sup> , 2<sup>nd</sup> and 4<sup>th</sup>  
Respondents.  
  
Sampath Pushpakumara for the 3<sup>rd</sup> Respondent.

Written Submissions on : 09.12.2025 for the Petitioner.  
(Respondent)

Supported on : 17.10.2025

Decided on : 02.04.2026

**K. Priyantha Fernando, J.(CA)**

1. The Petitioner invoked the jurisdiction of this Court by way of Petition dated 11<sup>th</sup> April 2023 under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka, seeking a Writ of *Certiorari* quashing the order of the 3<sup>rd</sup> Respondent (Arbitrator) marked P10 and a writ of *Mandamus* directing the 1<sup>st</sup> Respondent (Minister of Labour) to appoint another arbitrator to adjudicate the matter bearing reference No. IR/COM/04/2019/352 as evidenced by the document marked P4.

POSITION OF THE PETITIONER:

2. The Petitioner worked as a Grade V Accountant for the 4<sup>th</sup> Respondent Authority (National Housing Development Authority) from around 4<sup>th</sup> October 1993. He received promotions and held the post of senior district manager of salary bracket HM1-1 before his retirement at the age of 60 on 19<sup>th</sup> May 2021. Prior to his retirement and during his period of service with the 4<sup>th</sup> Respondent, he made a complaint dated **17<sup>th</sup> July 2019** to the Colombo South Labour Office with regard to him being denied several promotions despite possessing the necessary qualifications for those promotions.
3. In pursuance of the complaint filed by the Petitioner marked as P1, the Colombo South Labour Office held an inquiry into the matter. However, a decision could not be arrived at with the 4<sup>th</sup> Respondent. As such, the matter was referred to the Industrial Relations Division of the Labour Department.
4. The Deputy Commissioner of Labour of the Industrial Relations Division has sent the letter dated 23.03.2021 (P2) to the Petitioner stating that the 4<sup>th</sup> Respondent Authority has made several adjustments with regard to the claim of promotions and asked the Petitioner whether the dispute is solved or still existing.
5. The Petitioner had responded by the letter dated **05.04.2021 (P3)** stating that the injustice done to him by the 4<sup>th</sup> Respondent has not been solved by said adjustment/promotion and hence the matter be referred for arbitration.
6. The matter was then referred for arbitration with the 3<sup>rd</sup> Respondent (Janajith de Silva) as arbitrator. The matter had been referred for arbitration by the letter dated **09<sup>th</sup> August 2022** [vide P4 (c)] which reads as follows:

*“Whether Mr. S.D.N. Jayalath working at the National Housing Development Authority is entitled for the salary category of HM 1-1 and whether he has been caused an injustice by not receiving it and if so, to what relief, from which date he is entitled”.*

7. Then on 30<sup>th</sup> August, 2022, the Petitioner submitted his first statement to the Arbitrator describing the injustice caused to him. Following which, on 26<sup>th</sup> October 2022, the Respondent tendered his own statement. The relevant documents have been marked as P5 and P6 respectively.
8. Paragraph 1 of the Statement of Objections of the Respondent dated 26<sup>th</sup> October 2022 revealed that the Respondent took up a preliminary objection in relation to the non-existence of the employee employer relationship between the Petitioner and the 4<sup>th</sup> Respondent as the Petitioner had retired from service with effect from 25<sup>th</sup> February 2021. Thus, it was contended that the Arbitration tribunal had no jurisdiction and hence neither should award be made nor the application sustained and so ought to be dismissed *in limine*. The Petitioner then in its Statement of counter objections clarified that the reason for such delay was due to the mandatory process carried out by the Department of Labour and the several rounds of discussions and inquiries held.
9. Following this, the 3<sup>rd</sup> Respondent Arbitrator pronounced an order of less than 2 pages, upholding the preliminary objection of the 4<sup>th</sup> Respondent, and dismissed the application on the basis that there was no live dispute between the 4<sup>th</sup> Respondent and the Petitioner. The Petitioner was informed of the award by letter dated 9<sup>th</sup> September 2023 marked as P9.
10. **The Petitioner contended** that the 3<sup>rd</sup> Respondent Arbitrator had unfairly and unlawfully dismissed the application of the Petitioner; Since the matter was referred by the Honourable Minister, the 3<sup>rd</sup> Respondent Arbitrator is legally bound to enquire into the matter without being hindered by technicalities; Furthermore, in the event that there was an issue with regard to the illegality of reference or jurisdiction for arbitration, such an objection should be made by way of an application to the Court of Appeal quashing that reference by way of Writ. Thus, the Petitioner submitted that the 3<sup>rd</sup> Respondent Arbitrator has acted in contravention to the Industrial Disputes Act No. 43 of 1950 by dismissing the application of the Petitioner.
11. The Petitioner contended that the 3<sup>rd</sup> Respondent without taking into account the argument of the Petitioner cited two cases in the order namely, S. Sundaralingam v State Bank of India (1970) 73 NLR 514 and Sumith Adihetty v Mercantile Investments

Limited SC/Appeal/22/2012 decided on 15.02.2016, merely mentioned the two cases in the order of dismissal without appropriately considering its relevance to the arbitration matter.

12. Moreover, the Petitioner submitted to this court that upon proper perusal of the judgments delivered in the two cited cases, it is clear that the 3<sup>rd</sup> Respondent has ignorantly and incorrectly grasped and applied the ratio of those cases. The Petitioner even contended that Hon. Wanasundera J. in the case of Sumith Adihetty v Mercantile Investments Limited SC/Appeal/22/2012 had described and analysed the legal position of the “live dispute”.
13. Furthermore, the Petitioners submitted that the third respondent arbitrator has come to an incorrect conclusion with regard to the factual situation of the cases cited in the order. The Petitioner even went so far as to say that the Adihetty case revolves around an entirely separate question of law as the employee in that case was terminated due to his own conduct, and the case did not deal with a situation where an employee had resigned while a dispute was pending. Thus, the Petitioner contended that the Adihetty case has no relevance or application in the arbitration proceedings held and so in the instant case either.
14. In terms of the case of the State Bank of India v S Sundaralingam (1970), the Petitioner argued that the facts of the case are distinct from the facts of his own matter. The Petitioner submitted that the matter dealt with an employee long after he had retired from his service whereas in the present case, the dispute arose while the employee was in active service for the 4<sup>th</sup> respondent.
15. Additionally, the Petitioner submitted that the Respondents had relied on Section 19 of the Industrial Disputes Act to contend that an award to the Petitioner could not be made post resignation. The relevant section states that award terms will be implied based on the contract of employment.
16. The Respondent contended that since the Petitioner had retired from his role, the contract of employment is no longer in effect, and so an award could not be made. In response to such submission, the Petitioner stated that the Respondents had relied on

the case of *Adihetty* but, since the facts are materially different from the arbitration matter, such authority could not have been relied upon. Especially since the contract had become non-operational due to the conduct of the 4<sup>th</sup> Respondent.

POSITION OF THE 1<sup>st</sup>, 2<sup>nd</sup> AND 4<sup>th</sup> RESPONDENTS:

17. These Respondents are the Minister of Labour, Commissioner General of Labour and National Housing Development Authority respectively. In their Statement of Objections, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents raised the following preliminary objections:

- a. All necessary parties are not before courts.
- b. the Petitioner has misrepresented material facts.
- c. the Petitioner is guilty of a lack of *uberrimae fides*.
- d. the relief sought by the Petitioner is futile.
- e. the Petitioner is not entitled to any relief from this court.
- f. Considering the facts and circumstances of the application, no valid ground has been urged for the issue of the writs.
- g. the Respondents acted within the scope and ambit of the law at all times.

18. They submitted that following the Petitioner's complaint to the Department of Labour seeking to obtain a promotion to the role of Assistant General Manager, The Board of Directors of the 4<sup>th</sup> respondent decided to grant approval for such promotion with effect from 11 January 2019. However, such promotion was not carried out owing to the fact that there were several disciplinary actions pending against the Petitioner.

19. Following the conclusion of the disciplinary actions, the Department of Labour by Board Paper dated 7<sup>th</sup> January, 2021 sought to resolve the issue by effecting the promotion of the Petitioner with effect from 11<sup>th</sup> September, 2019 under the HM 1-1 salary scale and all salary and payment adjustments were made accordingly and settled to the Petitioner.

20. The Respondent further submitted that although the Petitioner had fulfilled the basic qualification for the promotion, 4<sup>th</sup> Respondent Authority held that the petitioner had

lacked the skill set required for the role. Furthermore, the Respondent submitted that the decision to promote takes into account the number of satisfactory service years, available vacancies and results based on the interview.

21. In relation to the complaint made by the petitioner to the Colombo South Industrial Court, the respondent submitted that although the petitioner had made the said complaint prior to his resignation, the matter was presented to court 1 year and 3 months after his retirement. As such, the Respondents argued that in terms of **Section 19** of the Industrial Dispute Act No. 43 of 1950, since no live dispute exists and the employer employee relationship is no longer in effect, the matter ought to have been dismissed.

IS THERE A LIVE DISPUTE?

22. It is common ground that the Petitioner has retired from the service under the 4<sup>th</sup> Respondent on **19.05.2021** well before the **Reference was made by the 1<sup>st</sup> Respondent on 10<sup>th</sup> August 2022**. It is also apparent that the complainant applicant cannot come before an arbitrator on his own. Industrial Disputes Act No. 43 of 1950 lays down the procedure for arbitration.
23. An arbitration inquiry can only be initiated by a reference made by the stipulated authority, the relevant minister, i.e. the Minister of Labour. Even the Minister of Labour will not refer as such unless he gets a written communication asking for a reference to an Arbitrator. This process starts from a complaint made by a workman to the Department of Labour who has allegedly faced an injustice in his workplace.
24. The Petitioner had made his complaint to the Department of Labour on **17.07.2019** with regard to an injustice he has faced in respect of promotion due to him which he says have been denied to him from 2012. The conciliation process initiated by the Department of Labour between the complainant, i.e. the Petitioner and the 4<sup>th</sup> Respondent has proceeded for nearly two years. As the Petitioner could not obtain a proper relief through that process, it has been decided to refer the issue for settlement by arbitration.

25. It is pertinent to note that the Petitioner by P3 dated **05.04.2021**, addressed to the Deputy Commissioner of Labour, Industrial Relations Division had asked that this matter be referred for arbitration. Thus, he had complained as well as requested that the matter be sent for arbitration before his retirement date.
26. Accordingly, it was referred for arbitration by the Minister of Labour and Foreign Employment and it has been communicated to the Petitioner by P4(a) dated **10.08.2022**. However, by that time, the Petitioner had retired from service as at **19.05.2021**
27. It is important to note that under the provisions of the Industrial Disputes Act, the decision to refer the matter for arbitration is solely in the hands of the Minister of Labour and the Petitioner has no role there and it is beyond his control. In fact, by the time of referring this matter for arbitration, the Petitioner had retired from his employment under the 4<sup>th</sup> Respondent. It was by efflux-ion of time.
28. In the case of *Sumith Adihetty v. Mercantile Investment Ltd.* SC Appeal No. 22/2022, the Minister has referred 'Industrial Dispute' to the Arbitrator on 16.12.2003. By that time, the Appellant has **joined another Finance Company** with effect from 10.12.2003, accepting the post of Director in that Company. Therefore, it was apparent that the reference was done after the Appellant accepted the new occupation. It is stated by Her Ladyship Eva Wanasundera, PC. J., as follows:

*“I observe that it is correct to state that the Appellant having accepted the Director Post at LB Finance Ltd., had by **himself terminated his services with the Respondent and/or repudiated his contract of employment with the Respondent and/or repudiated his contract of employment with the Respondent, on 10.12.2003. Therefore, at the time of the Industrial Dispute reference to the Arbitrator, the employment that the Appellant was complaining of, had ended.**”*

Then Her Ladyship further stated that,

*“The main issue to be resolved seems to be whether the dispute that was referred to arbitration is a 'live dispute' or not in terms of the Industrial Disputes Act.....it is seen from the proceedings before the arbitrator that the Appellant*

*had not divulged that he is re-employed in the rival company of the employer at the time he participated in the arbitration. The counsel for the Respondent raised the issue that there is **no valid reference to the arbitrator done by the Minister as there was no existing dispute to be resolved between the employer and the employee who had repudiated the contract of employment before the reference was done** by the Minister as there was no existing dispute to be resolved between the employer and the employee who had repudiated the contract of employment before the reference was done by the Minister. The argument by the Appellant was that the respondent has no right to claim that the reference was not valid because he had already participated in the proceedings before the arbitrator. By acquiescence, would an invalid reference be taken as legally valid? Supposing an award was made what is the effect of it? Section 19 is relevant in this regard. Section 19 reads: “Effect of an award of an arbitrator. Every award of an arbitrator made in an industrial dispute and for the time being in force shall for the purposes of this Act, be binding on the parties, trade unions, employers and workmen referred to in the award in accordance with the provisions of Section 17(2); and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award.” It is obvious that when an award is made, the terms of the award becomes implied terms attached to the contract of employment. **So, there should be an existing contract of employment for the award to take effect at the time of making the award at the end of the arbitration. This section presupposes the existence of a valid contract between the employee and the employer.**”*

Her ladyship went on to state as follows:

*“I find that there was a live dispute to be gone into from the date of the transfer to the time and date on which the Appellant joined another company because the Appellant could be regarded as an employee who wanted to resolve that dispute having resorted to the provisions of the Industrial Disputes Act. The moment that the Appellant joined another company, the dispute that was arisen between the employer Respondent and the employee-Appellant and existed till that time, takes a different turn because it cannot be settled between the parties*

*as provided for in the Act. The dispute is not 'live' any more because then the employee is not an employee any more and the relationship between them comes to an end. There is no possibility of 'an award to be taken as implied terms of the contract of employment', according to Sec. 19 of the Act."*

29. The common factor between the above case and the present case is that there is no existing contract of employment for the award to take effect at the time of making the award at the end of the arbitration. The difference is that at the point of reference for arbitration there was a contract of employment in the present case but it was not so in Adihetti case. Furthermore, although the employee is at fault for terminating the contract in the former case, it is not same in the present case since the retirement happened in the normal course of events.

30. The learned Counsel for the Petitioner has contended that the Adihetti case revolves around the question of whether a valid reference to an Arbitrator can be made about an industrial dispute when the employee himself has terminated employment contract by his own conduct. In the present case, the applicant employee had retired from his service under the terms of his employment while the industrial dispute was pending between him and the employer and the reference for arbitration has been made while the industrial dispute was alive.

31. In the other case which the Arbitrator has cited is the *State Bank of India v. S. Sundaralingam* (1970) 73 NLR 514, Alles J. has analyzed the legal position as follows:

*"An 'industrial dispute' under the Act is defined as 'any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment, or non-employment or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in services, of any person and for the purposes of this definition 'workmen' includes a trade union consisting of workmen"*

*“I cannot see how this definition can ever apply to ‘any dispute or difference’ between an employer and an ex-employee who has retired from the services of his employer. Thuraisingham ceased to be the petitioner’s employee on 10<sup>th</sup> April 1962. This is a case of cessation of employment and not one of termination or reinstatement. When a person ceases to be in employment, there cannot be a live dispute between the parties which can ever culminate in an award affecting the terms of employment. Learned Counsel for the petitioner submitted that before Thuraisingham retired there was a dispute between the Bank and its employees in relation to the **salary scales and superannuation allowances which affected his pension**. Thuraisingham was not a party to that dispute. The Bank, though not bound to extend the benefits of that Award to Sub-Accountants, decided to do so in respect of those Sub-Accountants who were on strike and who were in active service at the time the strike was settled. Thuraisingham ceased to be in active service from 27<sup>th</sup> December 1961 up to the date of his retirement and seeks to obtain certain benefits to which he is not justly entitled.*

32. I observe that the facts of the State Bank of India case (supra), are different to the instant case. In that case, there was no industrial dispute between the employer and employee at the time of the employee’s retirement. The employee has retired on 10<sup>th</sup> April 1962 and the request for a salary revision under section 40 of the Industrial Disputes Act had been forwarded long after the employee retired from the service and there had been no industrial dispute at the time of the employee’s retirement.

33. It is pertinent to note that the dictum as laid down in the State Bank of India case was considered by Amerasinghe J. in S. B. Perera v. Standard Chartered Bank and Others (1995) 1 SLR 73 wherein the opinion of Lord Goddard relating to the **existence of live industrial disputes even after termination of the contract by the employee himself was highlighted**.

The relevant portion of the judgment reads as follows:

*“As we have seen, in R. v. National Arbitration Tribunal, Lord Goddard, rejected the submission that there must be an existing contract of employment*

*because “if effect were given to it, it would mean that any employer, or indeed, any worker,” (The emphasis is mine) “could nullify the whole provision of the Order and the object of the regulation under which it was made by terminating the contract of service before a reference was ordered or even after the matter was referred but before the Tribunal considered it.” Lord Goddard made it very clear that a dispute that had arisen while the contract of employment existed could be referred for settlement even though the contract had been later terminated and whether such termination had been initiated or brought about by the employer or by the workman himself. His Lordship said:*

*“It is, in my opinion, quite clear that there was here a trade dispute existing at any rate down to the date of the dismissal of the workmen . . . If there was a trade dispute it can, in my opinion, be referred to the tribunal whether or not the dispute has resulted in workmen being dismissed or in their having discharged themselves.” The emphasis is mine.*

*The matter was not raised in the case of State Bank of India v. Edirisinghe and Others (1). However, in that case the fact that the employee had resigned was not considered to be an obstacle to the reference of the dispute for settlement by arbitration.”*

34. G. P. S. De Silva C.J. in the judgment in the case of *De Costa v. ANZ Grindlays Bank plc* (1996) 1 SLR 307 considered the jurisdiction of an arbitrator to adjudicate a dispute between an employer and an ex-employee. In essence, it was considered whether or not there is a possibility of the existence of a ‘live industrial dispute’ in the case where the employee no longer serves in his capacity as a workman. The court further considered the unique nature of disputes involving gratuity payments owing to the retiral nature of “gratuity” and thus the importance of considering the nature of the dispute.

*“Consequently, the objection to jurisdiction of the arbitrator was well founded in the circumstances of the case although, with great respect, the suggestion that the definition of “industrial dispute” could never apply to a dispute between an employer and an ex-employee cannot be supported.” (Emphasis is mine).*

*The material part of the definition of the expression "industrial dispute" in section 48 reads thus:- "Industrial dispute means any dispute or difference between an employer and a workman.....connected with ..... the termination of services..... **of any person**....."*

35. Furthermore, it was held that when deciding whether a jurisdictional bar to the determination of the matter exists it is **paramount to look at the nature of the dispute**. The relevant portion of the judgment reads as follows:

*"In considering the question whether the reference made by the Minister in terms of section 4(1) was ultra vires for the reason that the **dispute arose only after the cessation of the Appellant's employment**, it is of the utmost importance and relevance to note the nature of the matter in dispute. The claim of the Appellant was in respect of the **payment of gratuity and this was the subject matter of the dispute**, which was referred for settlement by arbitration by the Minister in terms of section 4(1). Sharvananda, J., (as he then was) in his dissenting judgment in *The National Union of Workers v The Scottish Ceylon Tea Company Ltd.* considered "the connotation of the word gratuity as used in sections 31B (1) (b) and 33(1) (e) of the Industrial Disputes Act. "Having carefully reviewed the decisions in India and of this Court, the learned Judge concluded, "It is manifest that the word 'gratuity' has thus come to mean not only retiring allowance or retiral benefit payable on retirement **but also termination benefit payable on termination of a long and faithful service consequent to resignation prior to retiring age.**" (at page 178). (Emphasis added) (I wish to add that the majority view that section 31B (1) (b) postulated only "retiring gratuity" makes no difference for present purposes). Thus, it is seen that a **dispute in regard to a claim for "gratuity" can arise only upon the cessation of employment** (as a retiral benefit or terminal benefit). Therefore, it seems to me that the contention advanced on behalf of the 1<sup>st</sup> Respondent Bank that the Minister had no power to refer the present dispute for settlement by arbitration because the dispute arose after the Appellant resigned from service is not well-founded in the context of a dispute relating to a claim for gratuity."*

36. In the case at hand, the dispute is in relation to the Petitioner having been allegedly denied several job promotions despite having the necessary qualifications necessary for those posts. While one might argue that the dispute itself is not overtly 'retiral' in nature in the same way a dispute on gratuity payments would be, inquiries in relation to the denial of promotions are likely to result in the retirement of the employee due to a perceived unfairness in calculation of his salary which affects the pension benefits. In other words, salary scales and superannuation allowances can affect calculation of his pension.
37. The issue whether such a dispute would only arise after the cessation of the employment of the workman does not arise in the instant matter since the Petitioner has complained (vide P1) and requested for arbitration (vide P3) while he was in the employment. It has been referred for arbitration after his retirement due to factors beyond the control of the Petitioner. Although it is seen that the Petitioner's claim refers to a period of 2007 to 2019, such facts should be best left to the arbitrator to be weighed. In this review application, the Court is only concerned with the legality of the 3<sup>rd</sup> respondent's act of dismissing the claim (P10) on a preliminary objection.
38. Upon consideration of the Industrial Disputes Act No. 43 of 1950 and the judicial dicta cited, it is evident that the Petitioner's grievance concerning denial of rightful promotions has arisen during the tenure of his employment and was duly communicated to the Department of Labour, thereby initiating the statutory process of conciliation and subsequent reference to arbitration.
39. Moreover, the distinction between voluntary repudiation of employment, as in *Sumith Adihetty v. Mercantile Investment Ltd.*, and retirement in the ordinary course of service, as in the present case, is material. The latter does not extinguish the dispute, which continues to subsist until adjudicated.
40. As such, the Court is satisfied that the dispute referred by the Minister was one that had arisen during the subsistence of the Petitioner's employment, and that its subsequent referral to arbitration was not rendered invalid by the Petitioner's retirement.

41. It is my considered view that the matter therefore constitutes a **live dispute** within the meaning of the Industrial Disputes Act, amenable to resolution through the arbitral process.

42. Accordingly, a writ of *certiorari* is issued quashing the order of the 3<sup>rd</sup> Respondent contained in P10 and a writ of *mandamus* also granted directing the 1<sup>st</sup> Respondent to appoint another arbitrator to adjudicate the matter in reference in P4(b).

43. The parties should bear their own costs.

**Judge of the Court of Appeal**

**Hon. Rohantha Abeysuriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**