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 and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No.CA (WRIT) 340/2022

ALCHEMY HEAVY METALS (PVT) LTD,
No.153 A, Kandalama Road,
Dambulla.

PETITIONER

Vs.

1. **P. NAWARATNE**,
No.570/B/1, Ekamuthu Mawatha,
Off Nugegoda Road,
Thalawathugoda.

2. **B.K. PRABATH CHANDRAKEERTHI**,
The Commissioner General of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.

Currently

H.K.K.A. JAYASUNDARA,

The Commissioner General of Labour,
Labour Secretariat,
Narahenpita,
Colombo 5.

3. **MANUSHA NANAYAKKARA**,
Minister of Labour and Labour Relations,
Labour Secretariat,
Narahenpita,
Colombo 5.

<u>Currently</u>

Prof. ANIL JAYATHA FERNANDO
Minister of Labour and Labour Relations,
Labour Secretariat,
Colombo 5.

4. INTER COMPANY EMPLOYEES UNION,
(On behalf of 26 Employees),
No.259/9, Sethsiri Mawatha,
Koswattha,
Thalangama.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Dilip Obesekera with M. Pitawala for the Petitioner instructed by Shashika Hettiarachchi.

Abigal Jayakody, S.C. for the 2nd and 3rd Respondents**.**

Chamara Nanayakkarawasam with Apoorva Nanayakkara for the 4th Respondent.

Written Submissions: Preliminary Objections of the Petitioner filed on 17/11/2025.

2nd and 3rd Respondents filed on 20/11/2025.

W/S of the 4th Respondent filed on 12/11/2025.

Argued on : 22/10/2025.

Order on : 03/12/2025.

Order of Preliminary Objections

Dr. Sumudu Premachandra J.

1] The Petitioner of this application seeks the following reliefs;

a. Issue notice on the 1st to 4th Respondents

b. Issue a mandate in the nature of a Writ of Certiorari quashing the aforesaid decision and/or award of the 1st Respondent, marked as P8 and published in the Gazette notification marked as P9, which awards compensation to the employees represented by the 4th Respondent in this application

c. Issue a mandate in the nature of Writ of Mandamus directing the 1st Respondent to be represented by the Petitioner in this application and more fully referred to in paragraph 1 of this petition, in the employment of the 4th Respondent

d. Grant costs

e. Grant such other and further relief as Your Lordships' Court may seem meet.

2] When this matter was called for argument, the learned State Counsel for the 2nd and 3rd Respondents and the learned Counsel for the 4th Respondent raised preliminary objections with regard to the maintainability of this application. Those are;

i) Has the Petitioner failed to deposit security in cash under the amendment section, 31DDDDD, amendment to the Industrial Disputes Act (IDA) Act No. 22 of 2022, to the Commissioner General of Labour, if not, the application be dismissed in limine?

2] Has the Petitioner made a repudiation on 12/10/2022 after the gazette No. 2304/85 dated 05/11/2022, after filing this action, thus the application cannot be maintained and futile.

3] All parties have filed written submissions relating to the above preliminary objections.

4] Brief history of the case is as follows: The Petitioner is a duly incorporated company engaged in processing and exporting mineral sands, and has filed this application against the finding of an Arbitrator (1st Respondent), the Commissioner General of Labour. The industrial dispute arose after the 4th Respondent Trade Union demanded a Rs. 10,000/- salary increment. When negotiations failed, the Union initiated a strike on 15/02/2018. Consequently, the Petitioner issued "vacation of post" letters to the striking employees, treating them as having vacated their positions. This dispute was referred to arbitration to determine whether the termination was unjust and what relief the employees were entitled to. Key documents filed include the reference to arbitration (P1), the vacation of post notices (P2), and the statement of the dispute (P3). After an inquiry, on 23/02/2022, the 1st Respondent delivered an arbitral award (published in Gazette No. 2276/56, marked P9), ruling that the Petitioner had unreasonably terminated the services of the employees. The award ordered the Petitioner to pay a total compensation sum of Rs. 18,963,900.00.

5] Now, the Petitioner seeks Writs of Certiorari and Mandamus to quash the award, contending that the decision is illegal, irrational, and ultra vires to the Industrial Disputes Act. The Petitioner argues that the 1st Respondent failed to disclose the method or formula used to compute the compensation, which is imperative for transparency. Furthermore, the Petitioner asserts that the Arbitrator failed to take cognizance of the established law regarding compensation and the evidence regarding the company's severe financial losses. The application states that awarding compensation to employees who effectively vacated their posts is unreasonable and that the decision was made in excess of jurisdiction.

6] I now consider the merits of the preliminary objections. The first objection stems from section 31DDDDD amendment to the Industrial Disputes Act (IDA) Act No. 22 of 2022, which says;

> *"31DDDDD. (1) Where an application is preferred by an employer to the Court of Appeal, for the issue of an order* ***in the nature of a writ, against***

an award made by an arbitrator *under section 17(1) or by an industrial court under section 24, the Court of Appeal* ***shall entertain such application upon furnishing a security by such employer, in cash to the Commissioner-General****, where such award which is subject to such application directs the payment of a sum of money to the worker, of an amount equal to such sum.*

(2) The Commissioner-General shall cause to be deposited the sum as specified in subsection (1) in an account bearing interest, maintained by the Commissioner-General, in any approved bank in Sri Lanka.

(3) Every application preferred under this ***subsection shall be supported by a certificate under the hand of the Commissioner-General*** *to the effect that the security as specified in subsection (1) has been duly furnished by such employer.* [Emphasis is added]

7] The said amendment was certified and came into force on 16/09/2022, and this application is filed on 20/09/2022, 4 days after the operation of the said law.

8] The Petitioner, with regard to the preliminary objection, relies on section 6(3) of the Interpretation Ordinance. It is reproduced for clarity.

"(3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected-

(a) the past operation of or anything duly done or suffered under the repealed written law ;
(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law ;
(c) any action, proceeding, or thing pending or incompleted when the repealing written law comes into operation, but every such action,

proceeding, or thing may be carried on and completed as if there had been no such repeal."

9] The Petitioner argues that since the arbitral award was made on 23/02/2022 and the Act came into force on 16/09/2022, this Amendment has no retrospective effect. Further, they say that a new written law should not affect past acts, rights, or proceedings unless there is an express provision for retrospective effect.

10] The Petitioner relies on the decision of ***N. Ekanayake Vs. Hon. Attorney General & others*** - CA Writ 58/2012, decided on 25.04.2016 by His Lordship A.H.M.D. Nawaz, J, where he considered the Port Authority levying occupational charges on the Presumption of Non-Retrospectivity under Section 6 (3) of the Interpretation Ordinance, and a writ of Prohibition was issued. But I see this case as totally inapplicable to the instant case, as it relates to procedure and the minimum requirements to accept a case.

11] It is settled law that a new law should apply to the future, not the past. ("**nova constitutio futuris formam imponere debet, non præteritis,**"). It should be noted in ***Pitchamuttu Murugiah vs W.M. Heen Menika and others*****,** C.A. Case No.1086/2000 (F), Decided on 01.06.2018, His Lordship A.H.M.D. Nawaz, J., considered the well-known principle that the rights of the parties should be determined as at the date of the institution of the action. I am of the view that, when filing cases, the starting point for deciding the matter should be the date of institution in every action. A change of circumstances cannot be treated thereafter. In this matter, when the application was filed, there was a condition precedent under the 31DDDDD amendment to the Industrial Disputes Act (IDA) Act No. 22 of 2022 to furnish security in cash. I do not think the Petitioner can bypass this provision, as the question should be addressed to the date of filing, not the date of the arbitral award. Thus, there is no question on the Presumption of Non-Retrospectivity under Section 6 (3) of the Interpretation Ordinance.

12] Failing to furnish security in cash has been in depth analyzed by the case of ***Duro Pipe Industrial (Pvt) Ltd vs. Hettige Pradeep Silva and 36 Others*** *, SC/APPEAL/111/2022*, Decided on: 02.12.2024, the Supreme Court of Sri Lanka dismissed the employer's appeal because it failed to comply with the statutory requirement to deposit cash as security, instead providing a bank guarantee. The Court reaffirmed that strict adherence to the procedural rules for appeals from Labour Tribunal awards, as outlined in the Industrial Disputes Act, is mandatory. In that His Lordship Samayawardhena, J. cited with approval Maxwell on The Interpretation of Statutes, 12th Edition (1969), page 328 and 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****"* [Emphasis is added]

13] His Lordship further noted in the above judgement;

> *"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….*
>
> *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…"

14] In the above premises, furnishing security in cash should be deposited in the required time, and the court cannot extend the said time, bypassing the statutory provision.

15] In an identical case, in ***Lanka Electricity Company (Private) Limited (LECO) and B.K. Prabhath Chandrakeerthi, the Commissioner of Labour with other***s, Court of Appeal Case No: CA/WRIT/ 753/23, Decided on: 30.09.2024, His Lordship Mayadunne Corea J, had noted that;

"Hence, for the Court of Appeal to entertain an Application for the exercise of its Writ jurisdiction under this Section, it is mandatory that the Petitioner deposits the security, and the Application to the Court is supported by the certificate of deposit. In coming to the above conclusion this Court has considered the judgements of Wimalasiri Perera and others v. Lakmali Enterprises Diesel and Petrol Motor Engineers and others [2003] 1 SLR 62 which concerned an appeal against the award of a Labour Tribunal. It was held that the deposit of security is mandatory. The same was held in the case of Linea Aqua (Pvt) Ltd v. P. Chinthaka Lakdewa De Silva SC Appeal No. 178/2018 dated 05.07.2019 As per the facts of this case, it is clear that the Petitioner has failed to comply with these mandatory provisions. It is the view of this Court that the Petitioner's failure to comply with this mandatory provision is fatal to his Application and the Respondent's preliminary objection is well founded"

16] Moreover, in relation to section 10B (2) and (3) of the Industrial Dispute Act in ***Trend Setters (Private) Limited vs H. K. K. A. Jayasundera and others***, Court of Appeal Case No. CA/WRT/0436/2024, decided on 27.03.2025, non-following statutory provisions, His Lordship K. M. S. Dissanayake, J., noted as follows;

"It is well established principle, that when law provides a specific statutory procedure for obtaining a particular relief, that specific statutory procedure

must strictly, be followed in obtaining the same. In the result, Courts are bound to adhere to these procedures and cannot deviate from them as they are the legal framework for obtaining the specific relief created thereby, inasmuch as this principle ensures fairness and predictability in the legal system as it prevents parties from circumventing the law by using alternative methods. Hence, not only such employer but also this Court are bound to adhere to such specific statutory procedure as laid down by section 10B (2) and (3) of the Act in obtaining such specific statutory relief as created by section 10B(1) of the Act, for; this Court cannot deviate from such specific statutory procedure as laid down by section 10B (2) and (3) of the Act in determining as to whether such specific statutory relief ought to be granted or not to an employer as created by section 10B(1) thereof in view of the fact that the specific statutory legal procedure laid down therein is a legal framework for obtaining such specific statutory relief as created by section 10B(1) thereof. Not only that but also, the principle enumerated above ensures fairness and predictability in the legal system, as it prevents such employer from circumventing the specific statutory procedure laid down by section 10B(2) and (3) thereof by using alternative method…

In view of the foregoing, it is my considered view that an application purportedly, made under section 10B(1) of the Act, which does not strictly, adhere to and conform to such essential requisites and/or constituent elements as laid down by section 10B (2) and (3) of the Act, cannot in any manner, be considered in law as an application properly, constituted thereunder, for want of compliance of a ***condition precedent*** *to the proper constitution of an application under Section 10B(1) thereof as laid down in section 10B(2) and (3) thereof….*

The similar question to that of the one arisen in the instant application as raised by the Counsel for the Respondents in the shape of a preliminary legal objection as to the maintainability of the instant application due to noncompliance by the Petitioner, of section 10B(2) and (3) of the Act, had arisen in an appeal bearing number SC/APPEAL/ 111/2022 - decided on 02.12.2024in the Supreme Court. The question arose therein for decision was whether section 31D(8) of the Industrial Disputes Act as amended was *a condition precedent to the maintainability of an appeal or application under section 31D(4) thereof; and if so whether compliance thereof was mandatory and non-compliance was fatal to the maintainability of an appeal or application before High Court established under Article 154P of the Constitution.*

The Supreme Court had having cited with approval the decisions in Wimalasiri Perera and Others Vs Lakmali Enterprises Diesel and Petrol Motor Engineers and Others 2003 1 SLR 62 and Linea Aqua (Pvt) Ltd Vs. Lakdeva De Silva SC/APPEAL 178/2018 – SC Minutes of 13.11.2019, and having quoted and cited Maxwell on The Interpretation of Statues, 12th Edition (1969), pages 81, 201, 314, 328 and N.S. Bindra- Interpretation of Statutes, 13th Edition (2023), page 456, held at page 23 that 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 the applicant, as the case may be, has furnished the required security under the provisions of section 31D(8) of the Industrial Disputes Act as amended, the ***High Court shall reject the appeal or application"*** [Emphasis is added]

17] Thus, in considering the above legal position, I am of the view that the 1st preliminary objection is well-founded and should be upheld.

18] I now consider the 2nd objection that the Petitioner failed to timely repudiate the Arbitral Award under Section 20 of the Industrial Disputes Act (IDA). The repudiation letter was dated 12/10/2022 and gazetted on 22/04/2022, occurring over six months after the award's gazette date and after the Petition was filed (20/09/2022), rendering the repudiation futile and the award binding.

19] Section 20 of the Industrial Dispute Act considers the repudiation and termination of an arbitrator's award. It says;

(1) Any party, trade union, employer or workman, bound by an award made by an arbitrator under this Act, ***<u>may repudiate</u> the award by a written***

notice in the prescribed form sent to the Commissioner and to every other party*, trade union, employer and workman bound by the award: Provided that—*

(a) it shall not be necessary for any employer or any workman who is a member of a trade union which is, or is included in, a party bound by the award to be notified independently of such trade union; and

(b) any employer or workman who is a member of a trade union which is, or is included in, a party bound by the award, shall not be entitled to repudiate the award independently of such trade union, and any notice of repudiation given independently by any such employer or workman shall not be a valid notice for the purposes of this Act.

(2) Where a valid notice of repudiation of an award is received by the Commissioner, then, subject as hereinafter provided—

(a) the award to which such notice relates shall cease to have effect upon the expiration of three months immediately succeeding the month in which the notice is so received by the Commissioner or upon the expiration of twelve months from the date on which the award came into force as provided in section 18(2), whichever is the later; and

(b) the Commissioner shall cause such notice to be published in the Gazette, together with a declaration as to the time at which the award shall cease to have effect as provided in paragraph (a):

Provided, however, that where valid notice of repudiation of any award is given by one or some only, but not all, of the trade unions, employers or workmen, included in a party bound by the award, such award shall cease to have effect only in relation to each trade union, employer or workman giving such notice and to the members of any such union, but shall otherwise continue in force and have effect accordingly.” [Emphasis is added]

20] Thus, it is clear though, that this provision creates discretion to repudiate, (may), it was done after filing this application.

21] However, as noted above, the Petitioner failed to furnish the mandatory cash security equal to the awarded sum to the Commissioner-General, as required by Section 31DDDDD of the IDA, introduced by the 2022 Amendment (Act No. 22 of 2022). This security deposit is a condition precedent for the Court of Appeal to entertain an employer's application and ensure workmen are protected from financial prejudice during litigation.

22] In view of the aforesaid reason, I uphold the 1st preliminary objection. Consequently, the application is dismissed, no costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL